
(2025) 03 GAU CK 0448

In the Gauhati High Court

Case No : WP(C) Of 904 Of 2017, Connected With WP(C) Of 4502 Of 2017,
WP(C) Of 4584 Of 2018

Dr. Manalisha Choudhury

APPELLANT

Vs

The State Of Assam And 2 Ors.

RESPONDENT

Date of Decision : 25-03-2025

Acts Referred:

Assam Forensic Science Laboratory Service Rules, 1985 — Rule 3, 5, 12, 13, 28

Citation : (2025) 03 GAU CK 0448

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : N. J. Gogoi, M. P. Sarma, B. Goswami, P. P. Dutta

Final Decision : Disposed Of

Judgement

Manash Ranjan Pathak, J

1. All these three writ petitions being connected and the relief prayed for being similar, the same were heard analogously and are being disposed of by this common judgment and order.

2. Before going into the principal issue which is almost common to all the three writ petitions, it would be convenient to note the facts, in brief of all the three cases.

3. WP(C) 904 of 2017 has been instituted by one Bimal Konwar. It is contended that the petitioner was initially appointed as a Junior Scientific Officer in the Toxicology Division of the Directorate of Forensic Science, Assam on 09.12.1999 against a post reserved for ST(P). It is the case of the petitioner that as per the Assam Forensic Science Laboratory Service (Amendment) Rules, 2003, a Junior Scientific Officer is eligible for promotion to the next higher cadre of Scientific Officer on completion of three years of continuous service.

4. It is the case of the petitioner that he had rendered continuous service for

three years in the cadre of Junior Scientific Officer as on 2002. However, in spite of being eligible and vacancies being available, the petitioner was not granted promotion at that time and was granted the promotion only on 12.04.2006 which is after a delay of more than three years from the date when he had attained the eligibility. It is also contended that an incumbent holding the post of Scientific Officer becomes eligible for promotion to the next higher cadre of Senior Scientific Officer on completion of five years which the petitioner had done on 12.04.2011. However, there was again delay and the promotion to the post of Senior Scientific Officer was done only on 26.03.2013. It is the case of the petitioner that vacancies were available as on the date when he had attained the eligibility. It is also contended that on the retirement of the earlier incumbent holding the post of Deputy Director, Toxicology Division, the petitioner was allowed to hold the charge of the said post on 03.03.2016 as the petitioner was the Senior Scientific Officer. It is the case of the petitioner that due to the delay in effecting his promotion at various stages, the petitioner had suffered grave prejudice.

5. It is also contended that the petitioner had submitted representations for giving retrospective effect to the promotion and also for invoking the provision for relaxation of the Rules. It is submitted that such relaxation was given to three incumbents, namely, Shri Samudra Baishya, Dr. Tilaka Das and Dr. Dhrubajyoti Hazarika by invoking Rule 28 of the Assam Forensic Science Laboratory Service Rules, 1985 (hereinafter the Rules, 1985). However, the said clause of relaxation has not been applied so far as the petitioner is concerned.

6. Coming to the second writ petition i.e. WP(C) 4502 of 2017, the petitioner is one Dr. Manalisha Choudhury whose grievance is more or less the same as that of the petitioner Bimal Konwar. It is submitted that the petitioner's case was not considered in spite of her eligibility and vacancies existing. It is contended that vide an advertisement dated 16.01.2017, two posts of Deputy Directors were sought to be filled up and one post was in the Serology Division in which the petitioner was working as a Scientific Officer. It was apprehended that by such action, the scope for promotion of the petitioner would be jeopardized.

7. So far, the petitioner Renu Borah in WP(C) 4584 of 2018 is concerned, the grievance and the relief prayed are more or less the same. It is stated that she was initially appointed as Senior Scientific Assistant on 19.03.1996 in the Serology Division of the Directorate of Forensic Science, Assam. She claims to have attained the eligibility for promotion to the post of Junior Scientific Officer in 1999 and was, however, granted such promotion only on 12.04.2006 after a delay of more than six years.

8. It is further the case of the petitioner that for the next promotion to the post of Scientific Officer wherein the eligibility is three years of continuous service in the feeder post, the promotion was delayed and instead of effecting such promotion in the year 2009, the same was given only on 05.07.2014. It is also contended that on the superannuation of the then Deputy Director, Serology

Division, the petitioner was the Senior Most Scientific Officer, but her promotion was delayed. Further, her representations were not duly considered and she has also cited the examples of the three incumbents alleging that they were given the benefit of promotion by invoking the relaxation provision in Rule 28 of the Rules of 1985 and the same yardstick was not applied so far as the petitioner was concerned.

9. I have heard Shri N. J. Gogoi, learned counsel for the petitioner in WP(C)/4584/2018 and Shri M. P. Sarma, learned counsel for the petitioner in WP(C)/904/2017 & WP(C)4502/2017. I have also heard Shri B. Goswami learned Addl. AG for the respondent and Shri P. P. Dutta, learned Standing Counsel, APSC in WP(C)/4502/2017.

10. Shri Sarma, learned counsel for the petitioner, Bimal Konwar has submitted that the deprivation of the petitioner from timely promotion is illegal and arbitrary and requires to be corrected by this Court. He submits that such promotions may be directed to be given retrospective effect so that the equities can be balanced. He has also submitted that after filing of the writ petition, in the year 2021, four numbers of posts of Joint Directors have been created. He has also submitted that the respondent authorities have admitted regarding eligibility of the petitioner and in this connection he has drawn the attention of this Court to the affidavit-in-opposition filed by Respondent No. 4 dated 22.08.2017, more particularly the averments made in paragraph 10 which reads as follows:

"10. That with regard to the statements made in paragraph No. 6 of the writ petition, it is respectfully stated that the first amendment process of Assam Forensic Science Laboratory Service Rule, 1985 was continued till 2003 and during that time promotions were restricted and normal promotion process restarted in 2006 for few posts of Directorate of Forensic Science, Assam which also includes one post of Scientific Officer in which Sri Bimal Konwar got promoted to Scientific Officer. Final gradation list of Scientific Officer was published in April, 2002 and the revised promotion proposal for the promotion to the post of Senior Scientific Officer from Scientific Officer was submitted to government in October, 2012 and subsequently Sri Konwar, the petitioner, got promoted to Senior Scientific Officer on 20.06.2013. Sri Bimal Konwar will be eligible for promotion to Deputy Director after completion of 5(five) years as Senior Scientific Officer."

11. The learned counsel claims that the petitioner is the senior most in the department and refers to Rule 28 relating to relaxation clause. He submits that when there has been instances of granting the benefit by invoking the relaxation clause, such benefits should also be given to the petitioner. He has however informed this Court that his client was promoted to the post of Deputy Director on 20.12.2023. He however submits that a direction is required to be given to give retrospective effect to all such promotions from the date when the petitioner had attained the eligibility. In support of his submission, the learned counsel has

relied upon the case of Union of India vs. N. R. Banerjee reported in (1997) 2 SCC 287.

12. The learned counsel, Shri Sarma has also appeared for the petitioner, Dr. Manalisha Choudhury in WP(C) 4502 of 2017 and has made a similar submission. He however has informed that as per instructions received, very recently his client has been promoted to the post of Deputy Director.

13. Shri Gogoi, learned counsel appearing for the petitioner, Renu Borah in WP(C) 4584 of 2018 has submitted that at every stage there has been a delay in effecting the promotion of his client. He submits that the petitioner being appointed as Senior Scientific Assistant in the year 1996 had become eligible for promotion to the next higher post after completion of 3 years. However, such appointment was made in the year 2006 which is after a period of 10 years. He has submitted that even for the next promotion wherein the eligibility was to be in continuous service for 3 years in the feeder cadre, the said promotion was made in the year 2014.

14. He has submitted that the next promotion to the post of Senior Scientific Officer should have been considered in the year 2019 which however was done only in the year 2021. He submits that so far as the cadre strength of Deputy Director is concerned, the same is 9 and at present there are 4 men in position and there are 5 vacancies. He has also reiterated and endorsed the submission that the relaxation clause of Rule 28 is required to be invoked and the relief be granted to the petitioners.

15. Per contra, Shri Goswami, the learned Addl. A. G. Assam has categorically refuted the principal allegation that 3 persons, namely, Shri Samudra Baishya, Dr. Tilaka Das and Dr. Dhrubajyoti Hazarika were given the benefit of relaxation by invoking Rule 28 of the Rules. By drawing the attention of this Court to the affidavit-in-opposition filed by the Director on 22.08.2017 in WP(C)/904/2017, the learned Addl. A. G. has submitted that the three officers had fulfilled the requisite number of years of service in the feeder post.

16. The learned State Counsel has also drawn the attention of this Court to the subsequent developments which are also not disputed. The note-sheets dated 07.09.2024 and 18.10.2024 concerning the Home & Political Department and the Personnel (B) Department of the Govt. of Assam which has been placed before this Court would reveal that the cases of the petitioners, Dr. Manalisha Choudhury and Smt. Renu Borah were considered for further promotion to the post of Deputy Director by invoking Rule 28 for relaxation and after such consideration, petitioner- Dr. Manalisha Choudhury was promoted on 14.02.2025.

17. So far as petitioner, Bimal Konwar is concerned, the learned Addl. A. G. has submitted that the said petitioner has otherwise got the benefit of reservation of ST(P) which was for a temporary period only and it is only a matter of chance and opportunity that in that period he was given the benefit of such reservation.

He has submitted that though in 2015, 2 posts of Deputy Director had fallen vacant, those were not pertaining to the Toxicology Division.

18. He has also informed that on 2023, the petitioner has been promoted to the rank of Deputy Director. He has submitted that the earlier arrangement dated 03.03.2016 was only to have the petitioner hold the charge of the Division and the actual promotion has been made in 2023. The learned State Counsel has also submitted that for the period 1999-2005, no promotions could be affected as the amendment of the Rules were going on. In this regard, he has drawn the attention of this Court to the affidavit-in-opposition filed on 21.08.2018 in the case of WP(C) 4584 of 2018. By referring to the averments made in paragraph 7 of the said affidavit, the learned counsel has submitted that the averments of invoking the relaxation clause for the incumbents was factually incorrect as all those 3 incumbents had got their promotion in due course.

19. For ready reference, the aforesaid averments made in paragraphs 4 & 7 are extracted herein below:

"4. That with regard to the averments made in paragraph 4 of the writ petition, the deponent begs to state that promotion was restricted during the year from 1999 to 2005 as the amendment of Assam Forensic Science Laboratory Service Rule, 1985 was going on. It is stated that the Directorate was having 10 posts of Scientific Officer, out of which 5 posts (50%) were promotional posts and all the five posts were filled up by

departmental candidates during the period from 2008 to 2012. However, one of these posts was stands vacated in June, 2013 due to promotion of Sri Bimal Konwar, Scientific Officer, Toxicology Division to the post of Senior Scientific Officer. The subsequent vacancy was filled up by departmental promotion of Dr. Monalisha Choudhury who was senior to the petitioner in the rank of Junior Scientific Officer. Thus, the petitioner's statement of not promoting her till 2014 even in presence of

available vacancy, is not correct."

7...

Regarding averments of promotion of Sri Samudra Baishya, Dr. Tilaka Das and Dr. Dhruba Jyoti Hazarika through relaxation of experience as mentioned in the paragraph-9 and also in the petitioner's representation dated 28.09.2016, it is stated that this Directorate does not have any record of relaxation of experience made by the Personnel Department in respect of those three persons, but the ARD available records shows that those three persons were promoted to the Deputy Director after possession of more than five years experience as Senior Scientific Officer. Therefore, the entitlement for relaxation of 3 years service for the promotional prospect of the petitioner does not arise."

20. The learned Addl. A. G. has also drawn the attention of this Court to the note-sheet of the department dated 07.09.2024 and has contended that so far as the

petitioner Dr. Manalisa Choudhury is concerned, she has already been given the promotion to the post of Deputy Director. He has submitted that in the case of the petitioner Manalisa Choudhury the provisions of Rule 28 of the Rules have been applied and relaxation given. He has submitted that except the petitioner, Renu Borah, both the other petitioners have been given their promotion to the post of Deputy Director and therefore there is no existing cause of action.

21. He has submitted that the case of Renu Borah was also considered by the appropriate authority which is revealed from Note 48 of the Note-Sheets placed on record along with other officers and the relaxation was sought from the Personnel Department which however had accorded that the relaxation can be given only for the incumbent, Dr. Manalisha Choudhury. The learned State Counsel has categorically denied the aspect of any arbitrariness or discrimination qua the petitioners and has submitted that there was no deprivation of any of the parties and the delay in the earlier promotions had occasioned for reasons which are bona fide, germane and relevant.

22. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

23. The principal grievance of the petitioners, as would reveal from the petitions is the delay in their promotions. It is the primary contention of the petitioners that they had attained the eligibility in the aspect of serving for the requisite period continuously in the feeder cadre and in spite of that and the promotions were not affected and long thereafter, such promotions have been made. The petitioners have consequently prayed for giving retrospective effect to the promotions which were given to them belatedly.

24. The petitioners have also tried to build up a case of discrimination by projecting that three incumbents were given the benefit of promotion by invoking the provision in the Rules namely, Rule 28 which provides for relaxation. The three incumbents have also been named in the petition. However, neither the said three incumbents have been made parties nor their promotions put to challenge.

25. Let us deal with the first aspect of challenge which is common to all the three writ petitions, namely, delay in effecting the promotions. The delay has been stated to be in every steps starting from promotion from the post of Senior Scientific Assistant to Junior Scientific Officer and thereafter to the post of Scientific Officer and finally to the post of Deputy Director. The claim has been made on the basis of the Rules of 1985. In Rule 3 thereof, the Class and Cadre have been given and under Rule 5 the method of recruitment to various cadres has been laid down. It is not in dispute that the posts concerned are to be filled up by means of promotion and the procedure has been laid down in Rules 12 and 13. Under Rule 12 (2), the eligibility in terms of the educational qualification as well as minimum continuous service in the feeder cadre have been laid down.

26. For ready reference, the relevant of Rule 12 (2) reads as follows:

" 12 (2). Subject to suitability, an officer shall be eligible for promotion if he possesses the qualification and experience as set forth below:

..."

27. Under Rule 13 the general procedure for promotion has been laid down and under Rule 13 (4) the criteria has been given as "Merit with due regard to Seniority".

28. Apart from the aforesaid prescriptions of the Rules, it is trite law that an employee does not have an indefeasible right for promotion and the right is only to the extent of a fair consideration. In these instant cases, the claim for promotions at various stages and also for giving retrospective effect is only on the basis that the petitioners had completed and acquired the required length of service in the feeder cadre. This Court is of the firm opinion that by fulfillment of the criteria of serving the minimum period in the feeder cadre cannot be a basis to claim promotion as a matter of right. It would have been a different matter if such claim was based on allegation of discrimination wherein any unfair treatment was given to the petitioners vis-à-vis similarly situated candidates. However, that is not the case projected by the petitioners.

29. Even if an examination is done on the touchstone of reasonability qua the delay in affecting the promotions, the department has put on affidavit that from the period 1999 to 2005, no promotions could be made as the Rules holding the field were at a stage of amendment. While the long period said to be consumed for such amendment may not be endorsed by this Court, in absence of a specific case of discrimination made out by the petitioners, no direction is liable to be issued to give retrospective effect to the promotions.

30. The only allegation made is that three incumbents were given the benefit of relaxation of the Rules by invoking Rule 28. As noted above, neither the three incumbents have been made parties in any of the proceedings nor their promotions have been put to challenge. What is however more important is that even if the said allegation is taken on its face value, there is no case of discrimination. In any case, the aforesaid allegation of giving benefit to the three incumbents by relaxing the Rules has been categorically refuted by the Department in the affidavit filed, the relevant part of which had already been extracted above.

31. As regards petitioner, Shri Bimal Konwar, he had got the benefit of reservation ST(P) as a matter of chance as the said reservation was given to a particular community which however was withdrawn after a brief tenure and in the said window period, the petitioner had got the appointment. Be that as it may, on that aspect, this Court would not like to make any observation. It has been submitted on behalf of the said petitioner that he was already holding the post of Deputy Director from the year 2016 and therefore the benefit should be given from that date. It is however on record that on the retirement of the earlier Deputy Director (Shri Samudra Baishya), the aforesaid petitioner was made the

In-charge of the Division. The aforesaid order cannot be construed to be an order of promotion to the post of Deputy Director. It is also on record that the said petitioner was ultimately promoted to the post of Deputy Director on 20.12.2023 during the pendency of the case.

32. As regards the reliance upon the case of N. R. Banerjee (supra), in the said decision, it has rather been clarified that mere inclusion in the panel does not confer any right for appointment and it is not incumbent that all posts are to be filled up and the only requirement is that the authorities must act reasonably, fairly and in public interest. For ready reference, the relevant portion is extract below:

"12. Considered from that perspective, the question arises : whether the view taken by the Tribunal is justified in law ? It is true that filling up of the posts are for clear or anticipated vacancies arising in the year. It is settled law that mere inclusion of one's name in the list does not confer any right in him/her to appointment. It is not incumbent that all posts may be filled up. But the authority must act reasonably, fairly and in public interest and omission thereof should not be arbitrary. In *Shankarasan Dash v. Union of India*, (1991) 2 SCR 567 : (1991 AIR SCW 1583), the Constitution Bench had held that inclusion of the name of a candidate in a merit list does not confer any right to be selected unless the relevant recruitment rules so indicate. The State is under no legal duty to fill up all or any of the vacancies even though the State acts in arbitrary manner. In *Babita Prasad v. State of Bihar*, (1993) Supp (3) SCC 268, it was held that mere inclusion of one's name in the panel does not confer on him/her any indefeasible right to appointment. It was further held that the purpose of making panel was to finalise the list of eligible candidates for appointment. The preparation of the panel should be to the extent of the notified or anticipated vacancies. Unduly wrong panel should not be operated. In *Union Territory of Chandigarh v. Dilbagh Singh*, (1993) 1 SCC 154 : (1992 AIR SCW 3263), it was held that the mere fact that a candidate's name finds a place in the select list as a selected candidate for appointment to a post, does not confer on him/her an indefeasible right to be appointed in such post in the absence of any specific rule entitling him to such appointment. In *State of Bihar v. Secretariat Assistant Successful Examinees Union* 1986, (1994) 1 SCC 126 : (1994 AIR SCW 573), it was held that a person who is selected and empanelled does not on account of empanelment alone acquire any indefeasible right to appointment. Empanelment is, at the best, a condition of eligibility for the purpose of appointment and that by itself does not amount to selection or creation of a vested right to appointment unless relevant rules state to the contrary. ..."

33. In the conspectus of the aforesaid discussion, this Court is of the opinion that no case for interference is made out by the petitioners. This Court has noticed that petitioners, Shri Bimal Konwar and Dr. Manalisha Choudhury have already been promoted to the post of Deputy Director and in case of Dr. Choudhury, Rule 28 has been pressed into service by the Departments. In the said exercise

however, though the case of petitioner, Renu Borah was considered, she has not been given the promotion. As observed above, though promotion cannot be claimed as a matter of right on the length of service itself, since the relaxation powers were exercised, it is directed that the case of Renu Borah be considered afresh by invoking the aforesaid Rule of relaxation. Such direction has been issued as the aforesaid incumbent Renu Borah appears to be at the verge of a retirement and had joined the department in the year 1996 and admittedly vacancies in the cadre are still existing. The aforesaid observation is made as inasmuch as in the Note-sheets it has been recorded that there is urgency as well as exigencies for filling up the posts.

34. All the writ petitions accordingly disposed of.

35. No order as to costs.

36. Copies of the Note-sheets of the Departments are made part of the records.