
(1996) 07 GAU CK 0014
In the Gauhati High Court
Case No : Civil Rule No. 1780 of 1989

Kanakeswar Goswami

APPELLANT

Vs

Brahmaputra Board

RESPONDENT

Date of Decision : 08-07-1996

Acts Referred:

Citation : (1996) 2 GLJ 339 : (1996) 3 GLR 75 : (1996) 3 GLT 563

Hon'ble Judges : V.Dutta Gyani, J

Bench : Single Bench

Advocate : K.N.Choudhary, A.Roy, Advocates appearing for Parties

Judgement

1. The petitioner herein is a Lower Division Clerk, seeking fixation of his due seniority with respondent Brahmaputra Board. He started his career as Work charge Sectional Assistant, way back in 1978 and was eventually to officiate as Lower Division AssistantcumTypist on 13.8.82 under the Board as per Annexure 1. He joined the post on being release from his parent office, sub Divisional Officer, Dibang Investigation Sub Division No.4, Pasighat. The order of release dated 16.8.82 has been filed as Annexure 2.

2. A professional inter se. seniority list of Lower Division Clerk was published and circulated by the Board on 6th January, 1989 which did not contain the petitioner's name. He, therefore, represented to the Board vide his representation Annexure 9. By office order dated 19th May, 1989, Annexure 10, petitioner's services with the Board were regularised along with many others. He was placed at SI No. 16 in the said office order. The date of regularisation of his service as shown in Annexure 10 is 16.8.82, subject of course to the condition that his resignation with effect from the date of joining as LDC under the Board was accepted by the parent department. The petitioner complied with this requirement vide Annexure 11, the letter of resignation and Annexure 12, its acceptance duly endorsed to the respondent Board as well.

3. The respondent Board on 27th July, 1989 published the inter se seniority of

the Lower Division Clerk, as per Annexure 13. The petitioner is shown in this list at SI No. 47.

"4. Petitioner's grievance is that barring LDC at SI No. 44, 41 and 46, the rest commencing from SI No. 1, 2, and 43 though apparently junior, have been wrongly placed above him. He therefore applied to the Board through proper channel for correction of the seniority list and his proper placement therein, i Since the respondent failed to redress the petitioner's grievance, he has approached this Court with the present petition under Article 226 of the Constitution.

5. Mr. Roy, learned counsel appearing for the petitioner, placing reliance ; on the following judgments :

(1) (1984) 4 SCC 329 (GP Doval vs. Union of India); (2) (1987) 4 SCC 566 (K. Madhavi & another vs. Union of India); (3) (1982) 2 SCC 116 (J. Kumar vs. Union of India); (4) (1982) 1 SCC 379 (RS Makhasi vs. I. Menon); (5) (1980) 4 SCC 226 (Baleswar Das vs. State of UP & others); (6) (1990) 2 SCC 715 (Direct Recruit Class II Engineering Officers Association vs. State of Maharashtra); (7) (1993) 3 SCC 371 (State of WB & another vs. Aghore Nath Dey & another);

urged that the petitioner's officiating service, or service on deputation for a long period, extending over 7 years, cannot be ignored in fixation of his seniority and those who joined, subsequent to the petitioner, could not be legally placed above him in the seniority list. The petitioner having complied with the condition as required by the respondent in submitting the resignation letter and its acceptance by the parent department with retrospective effect, cannot be denied his legitimate right of being considered and treated to have joined as a regular appointee on and from 16.8.82 which is the basis for the purpose of calculating his seniority. Referring to the rules, learned counsel submitted that these rules came into force in the year 1986 and even if these rules were not to be complied with to the petitioner's case yet, he is entitled to be placed above those who joined as LDCs subsequent to the petitioner's date of regularisation, that is, on 16.8.82.

5. Learned Standing Counsel for the Union of India Mr. KN Choudhury, on the other hand, referring to the office circular dated 30th June, 1987 filed as Annexure., 5, along with the petition submitted that the petitioner, in view of the circular, cannot claim seniority from 16.8.82 as on his own showing it was not until 19.5.89 that he has submitted his resignation which was accepted and communicated vide order dated 27th May, 1989, Annexure 12. He also submitted that it was open to the petitioner to have resigned from his parent department, if he so desired, even earlier having failed to do so he cannot be allowed to claim his seniority from 16.8.82.

6. Mr. Roy, learned counsel for the petitioner referring to the Rule 3 (b), governing seniority, which reads :

"Employees of the Central/State Government, electricity Board and other organisations already working in the Board on deputation shall be eligible as per Central Government rules, to be considered for absorption, subject to their fulfilling the criteria prescribed in these rules, barring the conditions of age and educational qualifications and on their being found fit for such absorption by the Selection Committee and on being so absorbed they shall be treated to have been appointed to their respective posts on regular basis. The deputationists so absorbed in the grade of LDC" shall be treated as direct recruit."

submitted that even if the present rule is made applicable to the petitioner's case ? A mere reading of this rule would go to show that even the respondent Board recognised the rights of a deputationist in principle as is reflected from the above rule. The criteria laid down is nothing but a fair play in action although this rule came into force vide notification dated 9.12.86.1 see no reason why this principle should not be extended and applied to this deputationist, who joined the Board years before the rule was in force. The underlying principle does not change the aim that the Board adopted it by way of rules as notified on 29.12.86.

7. There is no dispute that the petitioner was absorbed and his services were regularised as per office order dated 19th May, 1989 Annexure 10. Only one condition was attached to this regularisation, the condition being submission and acceptance and resignation from the date regularisation, that is, 16.8.82 in the petitioner's case. Apart from documents placed on record, the petitioner has in paragraph 13 of the writ petition made a categorical statement to the following effect.

"That pursuant to the said office order dated 19.5.89 the petitioner on 24.5.89 submitted his letter of resignation to the Under Secretary, Flood Control Department, Govt of Assam and requested the authority to accept his resignation with effect from 16.8.82. It may be stated herein that the resignation so tendered by the petitioner was accepted by the Flood Control Department with effect from 16.8.82 as prayed for and the said acceptance was communicated to the petitioner by letter No.FC (E) 348/85/731 dated Guwahati the 27th May, 1989."

8. The respondents in their affidavit in opposition, have controverted the above averments, in the following manner:

"That with regard to the statements made in paragraph 13 of the writ petition the deponent makes no comment."

The State of Assam has also been impleaded as respondent but has not chosen to file any return, per counter. In the circumstances the averments made by the petitioner, has virtually remain uncontroverted and deserves to be accepted not on mere technical ground but also as supported by documents. "

9. There is yet another aspect of the matter the respondent held out to the petitioner that his services would be regularised from 16.8.82 subject to

fulfillment of the condition that the submitted his resignation to the parent department, and the same to be accepted with retrospective effect from 16.8.82. He accordingly submitted his resignation as well as the acceptance letter. With this factual position being clear, to my mind, it is no longer necessary to deal with the host of authorities submitted on either side. The petitioner is entitled to his seniority from the date of his regularisation, that is, 16.8.82. The impugned seniority list should be accordingly corrected and the petitioners shall be placed according to his date of regularisation in service on 16.8.82, all those who joined or whose j services were regularised subsequent to him shall be placed below him.

10. Learned Standing Counsel referring to paragraph 7 of the affidavitin " opposition submitted that so far as Shri SN Sarma in SI No.2 is concerned, he was absorbed in the Board with effect from March, 1982. Referring to the impugned seniority list, Annexure 13, Mr. Roy, learned counsel for the petitioner submitted that his date of joining as given in Annexure 13 is 29.1.83.

Be that as it may, if the said Shri Sarma has any genuine grievance he may approach the authority and it is open to the competent authority, after affording a reasonable opportunity of being heard to the petitioner, to make a suitable change in the seniority list so far, as Shri SN Sarma is concerned, but this will not apply to other candidates. Needless to add that the petitioner is entitled to other consequential relief, such as, promotion and enhancement of pay on the basis of his refixation of seniority. The petition stands allowed with no order as to costs.