
(2012) 10 GAU CK 0045
In the Gauhati High Court
Case No : Writ Petition (Civil) No.3070 of 2010

Kumud Gogoi

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Citation : (2013) 2 GLR 772

Hon'ble Judges : B.K.Sharma, J

Bench : Single Bench

Advocate : Ms. K. Baruah for the petitioner.??Mr. K.N. Choudhury , Mr. M. Mahanta for the respondents., Advocates appearing for Parties

Judgement

1. Heard Ms. K. Baruah, learned counsel for the petitioner also heard Mr. K.N. Choudhury, learned additional Senior Advocate General, Assam assisted by Mr. M. Mahanta, learned Counsel for the respondents.

2. The petitioner is aggrieved by the annexure 6 communication dated 8.3.2010 made to the Superintendent of Railway Police, Assam by the Deputy Inspector General of Police (Admn.) Assam communicating the decision that the petitioner having not earned eligibility, was not entitled to appear in the scheduled departmental examination for promotion to the rank of SI of Police (Unarmed Branch).

3. The petitioner was first appointed as AB Constable on 11.3.1994 and thereafter on 31.12.2004 he was promoted to the post of Havilder (Armed Branch). By Annexure 3 order dated 20.4.2008 he was converted from Armed Branch to Unarmed Branch with a stipulation that his seniority as H.C. (UB) would be effective from the date of conversion.

4. By Annexure 4 letter dated 10.11.2009 addressed to the Superintendent of Police GRP Pandu, Guwahati by the Deputy Inspector General of Police, (Admn.), Assam, it was communicated that the next departmental examination of ASI/HC (UB) would be held during January/ February, 2010. Accordingly a request was

made to communicate the names and the particulars of the incumbents who have completed five years of service in the rank as on 1.1.2010. By Annexure 5 letter dated 8.12.2009, the Superintendent of Railway Police had communicated to the Deputy Inspector General of Police (Admn.) about the information of the incumbents to the Deputy Inspector General of Police, (Admn.). In the said letter the name of the petitioner appeared at serial No. 42 to which the aforesaid objection was raised in Annexure 6 of the impugned order dated 8.3.2010.

5. According to the respondents, the petitioner having not completed five years of service as UB Havilder/ASI as on 1.1.2010, he was not entitled to sit in the departmental examination for promotion to the rank of S.I. In the counter affidavit filed by the respondents, Annexure 1 certain documents have been annexed to show that the requirement of eligibility is five years of service as HC/ASI in the Armed Branch. On perusal of the said documents, it appears that the same are only WT messages requiring the authority to furnish the names of the candidates with their relevant service particulars who have completed five years of service as HC(UB). The impugned Annexure 4 communication dated 8.3.2010 also speaks of counting of seniority of the petitioner as HC/ASI (UB) w.e.f. the date of joining of the said stream from his earlier stream (Armed Branch).

6. Ms. Baruah, learned counsel for the petitioner submits that there is no requirement of completion of five years of service in the UB stream and that total length of service rendered by the petitioner both in Armed Branch and Unarmed Branch are required to be taken into account towards counting the length of service. In this connection, she has referred to the provision of rule 40 of the Assam Police Manual, PartIII. The said rule provides that not more than 50% of the appointments of SI in the Unarmed Branch may be filled up by promotion from the rank of ASI which is equivalent to HC. As per the said Rule, an ASI must ordinarily have served full three years in the department and must be sufficiently well educated to make eligible for promotion.

7. Referring to the aforesaid provision, learned counsel for the petitioner submits that only requirement being three years of service in the department irrespective of the stream, the respondents cannot deny consideration of the case of the petitioner on the ground of seniority being counted w.e.f. 20.4.2010 on which date he was converted to Unarmed Branch from Armed Branch.

8. Mr. K.N. Choudhury, learned Addl. Senior Advocate General, Assam on the other hand submits that when the particular promotion will be affected on the basis of the departmental examination, necessarily requirement of the particular length of service will have to be counted in the particular stream and the service rendered by the petitioner in both the streams cannot be clubbed. As regards the WT message laying down the requirement of five years of service in the feeder rank, he submits that the departmental authority are always empowered to lay down the particular criteria required to be fulfilled to sit in the examination for consideration of promotion.

9. I have given my anxious consideration to the submissions made by the learned counsel for the parties and have also considered the entire materials on record. In the writ petition, the petitioner has given three instances of considering the cases of allowing to sit in the examination for promotion. The instances have been cited in paragraph 11 of the writ petition. In the counter affidavit filed by the respondents dealing with the said instances, it has been admitted that one Smt. Lina Hazarika who was earlier in the Armed Branch and later on converted to Unarmed Branch was allowed to sit in the examination even before completion of five years of service. Said Smt. Lina Hazarika was converted to Unarmed Branch from Armed Branch by order dated 10.3.2004 and immediately thereafter she was allowed to sit in the departmental examination conducted in the year 2005. However, as regards the other two instances, the respondents have denied the same stating that they were allowed to sit in the examination only on completion of five years of service in the Unarmed Branch stream.

10. During the course of hearing, learned counsel for the petitioner has cited some more instances to bring home her point of argument that some other incumbents who were also converted to Unarmed Branch like that of the petitioner had been allowed to sit in the examination without requiring them to complete five years of service in the Unarmed Branch.

11. Mr. K.N. Choudhury, learned Addl. Senior Advocate General has fairly admitted that the requirement of five years of service in the Unarmed Branch has not been laid down by office memorandum and/ or Notification. He also fairly concedes that such requirement cannot be laid down by a WT message.

12. The provision of rule 40 of the Assam Police Manual PartIII has been noted above. The said rule refers to appointment of SubInspector in the Unarmed Branch by promotion from the rank of ASI/HB. Laying down the requirement of promotion, the rule provides that ASI must ordinarily have served with credit of full three years in the department and sufficiently well educated to make him eligible for promotion.

13. On perusal of the rule 40, what is seen is the requirement of full three years of service is in the department and not in the Branch/ Stream. The petitioner having been appointed in the department way back in 1994, he had to his credit more than five years of service at the time of consideration of the case of the incumbents on 1.1.2010.

14. Learned counsel for the respondents has submitted that the petitioner having worked in the Armed Branch up to 20.4.2008, he may not have experience of work in the Unarmed Branch. To counter such argument, learned counsel for the petitioner has referred to Annexures1 and 2 letters dated 30.5.2007 and 12.6.2007 which speak of services rendered by the petitioner in the particular Commission of Enquiry which involved service of summons/contempt orders etc. The said two letters referred appreciation of the petitioner in the particular

Commission. Such service was rendered by the petitioner at the time when he was working in the Armed Branch. It is in this context, learned counsel for the petitioner submits that irrespective of the stream in which the petitioner has been serving and/or had served, the services of both the streams are required to be computed together towards consideration of his case for promotion.

15. While entertaining the writ petition, an interim order was passed allowing the writ petitioner to sit in the departmental examination. However, the results are yet to be declared.

16. In view of the above, I have no hesitation to hold that the petitioner is fully eligible to sit in the said examination as the requirement is three years of service in the department irrespective of the stream in which he has been serving. If the analogy adopted by the respondents in counting the seniority of petitioner from 20.4.2008, i.e., on the date on which the petitioner was converted from Armed Branch to Unarmed Branch is accepted, his entire period of earlier service would get effaced. Seniority and experience on the length of service are two distinct and different concepts. The petitioner would get seniority from the date of conversion in the present stream w.e.f. 20.4.2008, but so far as experience is concerned, same will have to be counted from his initial date of entry in his service, i.e., 11.3.1994. Thus, even if the plea of the respondents that requirement is five years of service is accepted, he fully conforms to the requirement to the said eligibility.

17. In view of the above, the writ petition is allowed by interfering with Annexure 6 letter dated 8.3.2010 with further direction to the respondents to declare the results of the petitioner's examination immediately. Depending upon the outcome of the same, the respondents will take the further course of action in the matter.