

(2019) 11 GAU CK 0016

In the Gauhati High Court

Case No : Writ Petition (C) No. 6619 Of 2016

Maresh Dek And 4 Ors

APPELLANT

Vs

Board Of Directors And 6 Ors

RESPONDENT

Date of Decision : 06-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226
Assam State Development Corporation For Scheduled Castes Limited (Officers And Staff) Service Rules, 2005 — Rule 6(ii), 10, 10(a), 13, 13(vi), 14

Citation : (2019) 11 GAU CK 0016

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : C. Deka, S. Borthakur, R. Borpujari, J. Choudhury, N.N.B. Choudhury

Final Decision : Dismissed

Judgement

1) Heard Mr. C. Deka, learned counsel for the petitioners. Also heard Mr. S. Borthakur, learned counsel for the respondents No.1 and 2, Mr. R.

Borpujari, learned standing counsel for respondent No.3 and Mr. N.N.B. Choudhury, learned counsel for respondent No.6. None appears on call for

the respondents No.4, 5 and 7.

2) By this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the order dated 05.10.2013, thereby granting promotion to the respondents No.5, 6 and 7.

3) In brief, the case projected by the learned counsel for the petitioners is that they were all appointed to the post of Junior/ Recovery Assistant by the

Managing Director of the Assam State Development Corporation for Scheduled Castes Limited (respondent No.2). The petitioner No.5 was

appointed vide order dated 07.09.1987, and posted at Silchar Branch. The

petitioner No.3 was also appointed by the same order dated 07.09.1987, and posted at Head Office of respondent No.1 at Guwahati. The petitioner No.1 was appointed vide order dated 23.09.1989, and posted at Guwahati Branch. The petitioner No.5 was also appointed vide same order dated 23.09.1989 and posted at North Lakhimpur Branch. The petitioner No.4 was appointed by order dated 29.09.1989 and posted at Golaghat Branch. It is projected that though there was no Service Rules in force to regulate the service condition of the employees of respondent No.1, therefore, the Rules framed by the State Government was being followed by the respondent No.1. It is submitted that the minimum qualification for entry into service as Junior/ Recovery Assistant was Pre- University/ Higher Secondary (i.e. 10+2 level). It is also submitted that promotional avenues was from the post of Junior Assistant (â??JAâ?? for short) to the post of Senior Assistant (â??SAâ?? for short); from SA to the post of Assistant Development Officer (â??ADOâ?? for short); from ADO to the post of Superintendent (â??Suptd.â?? for short); etc. It is submitted that Assam State Development Corporation for Scheduled Castes Limited (Officers and Staff) Service Rules, 2005 (hereinafter referred to as â??2005 Rulesâ?) was adopted, and as per Rule 6(ii) thereof, it is provided that 25% of the posts in the cadre of ADO is to be filled up by direct recruitment and 75% posts is to be filled up by promotion from the post of SA. It is submitted that as per the provisions of Rule 10(a) of the 2005 Rules, it has been provided that the academic qualification and experience of candidates for direct recruitment shall be as prescribed by the appointing authority or the Board of Directors of the Corporation, provided that prescribed that for direct recruitment to the post of ADO, he must be a Graduate with 5 years experience in service. It is, however, submitted that such academic qualification is not required for persons filling up the said post of ADO by way of promotional quota from amongst SAâ??s.

4) By referring to the Addl. Affidavit- in- reply filed by the petitioner, it is submitted that refuting the stand taken by the respondents No.1 and 2 in their affidavit- in-opposition, the petitioner has categorically stated that the Managing Director of the respondent No.1 Corporation had proposed to re-designate 17 numbers of posts of SAâ??s as ADOâ??s/ Extension Officer (â??EOâ?? for short)/ Field Investigator (â??FIâ?? for short) without

additional financial involvement. It is further submitted that such proposal of the Managing Director was of the year 1988, when there was no service rules of the respondent No.1 Corporation in force, but as such proposal was not incorporated in the 2005 Rules, the proposal of the Managing Director of the respondent No.1 Corporation had become redundant for all intends and purpose. Accordingly, it is submitted that re-designation of posts cannot be equated with creation of posts as wrongly projected by the respondents. It is submitted that the respondent No.1 Corporation had not obtained any sanction from the State Government to create the post of ADO and, as such, the act of promoting persons to the post of ADO is not sustainable on facts and in law. It is submitted that on one hand the petitioners have been denied promotion to the post of ADO, but on the other hand the two employees of the respondent No.1 Corporation, namely, Smt. Sunmoni Deka and Sri Shanti Ram Das were promoted after adoption of 2005 Rules, out of which Smt. Sunmoni Deka was under-graduate, and Sri Shanti Ram Das was HSSLC pass candidate. It is also submitted that the posts of Suptd. and ADO are of the same status, class and grade, all having same scale of pay. Accordingly, the learned counsel for the petitioner has submitted that although the petitioners had demanded that they be promoted, but the authorities have refused to concede to the just demand of the petitioners and, as such, this writ petition.

5) The learned Standing Counsel for the respondents No.1 and 2 has opposed this writ petition and it is submitted that the writ petitioners cannot be promoted to the next higher cadre of ADO as they do not possess the requisite qualification. However, the minimum qualification to be promoted the post of ADO is Graduate with minimum 5 years of experience in service as per the 2005 Rules, as such, the respondents No.5, 6 and 7 were promoted as because they were having the requisite educational qualification, being Graduates. It is submitted that by virtue of minutes of the meeting Board of Directors dated 09.09.1994, while two undergraduate SAs were re-designated as ADO, on special ground and it was decided that henceforth, no SA having qualification less than Graduate will be re-designated as ADO. Thereafter, in the meeting Board of Directors held on 22.08.2008, it was decided to upgrade the post of ADO by giving a separate identity with higher scale of pay. In the said meeting it was also decided

to promote Graduate SAs to the post of ADO for being posted in Branch Offices and accordingly, the private respondents No.5, 6 and 7 were

promoted to the post of ADO as per 2005 Rules. It is also submitted that as per Rule 13(vi) of 2005 Rules, a JA/RA, who is a Graduate is entitled to

be promoted to the re-designated post of ADO. However, as per present policy for promotions, from JA/RA, promotions are made to the post of SA,

and from SA one gets promoted to the post of ADO. It is submitted that in the additional affidavit- in- reply filed by the petitioners on 22.01.2019, they

had taken a plea that two employees, namely Smt. Sukumoni Deka and Sri Shanti Ram Das, both non-graduates were promoted to the post of Suptd.

and ADO respectively vide office order dated 24.04.2018, i.e. after 2005 Rules have come in force. In the said regard, by referring to the reply filed

by the respondents No.1 and 2 on 30.05.2019, it is submitted that the posts held by the said two employees, namely, Smt. Sukumoni Deka and Sri

Shanti Ram Das were upgraded and/or re-designated vide decision taken by the respondent No.1 in its meeting held on 09.09.1994 and since then they

were rendering their services in the post of Suptd. and ADO respectively. As the said posts held by them were upgraded by the respondent No.1 in its

meeting held on 26.02.2008, the said two employees became entitled to get up-gradation. By referring to the relevant order No.

ACDC/Estt/185/84/Pt-I/328 dated 24.04.2008, it is submitted that the said order reflects that 7 numbers of employees re-designated as ADO were

regularised in the said post, which shows that they said two employees were working as ADO prior to the date when the order dated 24.04.2008 was

issued. In support of his submissions, the learned standing counsel for respondents No.1 and 2 has placed reliance on the case of The State of Jammu

& Kashmir Vs. Triloki Nath Khosa & Ors., (1974) 1 SCC 19.

6) The learned counsel for the respondent No.6 has referred to the affidavit- in- opposition filed by the respondent No.6. He has also adopted the

submissions made by the learned Standing Counsel for the respondents No.1 and 2. it is submitted that as the petitioners do not have the requisite

educational qualification of Graduate, their cases were apparently not considered by the respondents No.1 and 2 for being promoted to the post of

ADO.

7) Having heard the learned counsel for the appearing parties, the following

pleadings on record has been perused, viz., writ petition, affidavit- in- opposition filed by the respondent Nos.1 and 2 on 28.03.2017, affidavit- in- reply filed by the petitioner on 29.07.2017, affidavit filed by the respondent No.1 on 16.03.2018, affidavit- in- opposition filed by the respondent No.6 on 02.04.2018, additional affidavit- in- reply filed by the petitioner on 22.01.2019, reply affidavit by respondent Nos.1 and 2 filed on 30.05.2019.

8) At the outset, the relevant Rule 10, 13 and 14 of the 2005 Rules are quoted below:-

10. The academic qualification and experience of candidates for direct recruitment shall be as prescribed by the appointing authority or Board of Director of the Corporation provided.

(a) For the Post of Asstt. Development Officer, he must be Graduate with 5 years experience in service.

(b) Account Assistant: B.Com. passed with 2 years experience in service.

(c) Jr. Asstt./Recovery Asstt. : PU/HS/Graduate in Arts/Science or Commerce.

(d) Typist: H.S.L.C./Higher Secondary or equivalent examination passed with diploma in Type Writing with 60 words speed per minute.

Preference will be given to those Candidates having experience in Computer Typing.

(e) Driver: Read up to Class IX with Driving Licence & experience in driving.

(f) Peon/Chowkider: Read upto class VIII/IX.

13. Promotion:

Vacancies in the Cadre at Administrative-cum-Development Section and Accounts Section from one cadre to another shall be filled up

subject to suitability as may be decided by the Board and by the Appointing Authority/Commission as set forth in rule 14 and also subject to

possessing qualifications and experience as prescribed hereinafter, and officer shall be eligible for promotion from one cadre to another of

the service in the manner provided below:

In Administrative Section-cum-Development Section:

(i) From Administrative Officer/Zonal Officer to Chief Personnel Officer.

(ii) From Dev. Officer/Superintendent to Administrative Officer.

(iii) From Asstt. Superintendent/Asstt. Dev. Officer/Sr. Asstt. to Superintendent.

- (iv) From Development Officer to Zonal Officer/ Planning Officer.
- (v) Asstt. Development Officer/Sr. Asstt. to Development Officer.
- (vi) Jr. Asstt./Recovery Asstt. to AD.O/Sr. Asstt.
- (vii) Jr. Asstt. Cum-typist to Sr. Asstt.
- (viii) Jr. Engineer to Asstt. Engineer.

ACCOUNTS SECTION:

- (a) From Accounts Officer to Chief Accounts Officer.
- (b) From Sr. Accountant to Accounts Officer.
- (c) From Accountant to Sr. Accountant.
- (d) Sr. Account Asstt. to Accountant.
- (e) From Account Asstt./Jr. Asstt. to Sr. Acctt. Asstt.

(Subject to suitability of any assistant in accounts matter his service may be transferred inter departmentally).

14. Recruitment by promotion and procedure thereof:

1. Before the end of the year, the Appointing Authority shall make any assessment regarding likely number of vacancies to be filled up by promotion during the next year in each cadre according to seniority and shall intimate the same to the Selection Board.

2. The Appointing Authority shall then furnish to the selection Board the following documents and information with regard to as many officer/staff in order of seniority-cum-merit as four times the numbers of vacancies.

- a) Information about the number of vacancies.
- b) List of Officers/Staff in order of seniority eligible for promotion (separate list for promotion to different cadres shall be furnished) indicating the cadres to which the case of promotion is to be considered.
- c) Character rolls of last three years of the members selected for promotion and personal file of the officer/staff listed.
- d) Details about departmental proceeding, allegation, if any against the Officer/ Staff.
- e) Any other documents and information as may be considered necessary by the Appointing Authority or required by the Selection Board.

f) The Appointing Authority shall simultaneously request the selection board to

recommended within one month lists of Officers/Staff found

suitable for promotion in order to pretenure in respect of promotion to each of the cadres which requirement is to be made by promotion.

3. The selection shall be made on the basis of merit with due regard to seniority in case of promotion.

4. The selection Board after examination of the documents and information furnished by the Appointing Authority list (s) of the

Officers/Staff about double the probable of vacancies in order of preference, found suitable for promotion. In case the selection Board

does not consider and Officer/Staff suitable for promotion according to seniority, it shall record the reason thereof in writing.

5. The Appointing Authority shall consider the list prepared by the selection Board alongwith character rolls of last three years of the

employee and get the list (s) approved by the Board of Directors unless it considers any change in the list received from the selection Board,

he shall inform the selection Board of the charges proposed and after taking into account of comments, if any the Appointing Authority

shall place the matter before the board of Directors for approval of the lists with such modification, if any, as may its opinion be just and

proper.

6. The conclusion of a candidates name in a select list confer no right for promotion unless the Appointing Authority is satisfied after such

enquiry as may be considered necessary that a candidate is suitable for promotion.

7. The select list (s) shall remain valid for twelve months from the date of approval by the Board of Directors.

8. The promotion shall be in accordance with the list finally approved by the Board of Directors.

9. Selection Board:

The Board, as referred to rule 6 and 11 shall consist of the following:

(i) Chairman of the Board of Directors - Chairman.

(ii) Managing Director of the SCDC Ltd - Member.

(iii) Joint Secy. or Deputy Secy. Govt. of Assam WPT & BC Deptt. - Member.

(iv) Director of Welfare of Scheduled Caste - Member.

(v) Chief Personnel Officer -Member-Secy.??

9) The relevant resolution No. 7(A) taken by the respondent No.1 in its meeting held on 14.03.1988, 09.09.1994 and 26.02.2008 are re-produced

herein below:-

??Agenda item No.7 (A) Re-designation and Up-gradation of some posts.

(A) Under this item the MD proposed to re-designate 17 numbers of posts of Sr. Assistants as Assistant Development Officer/Extension

Officer/Field Investigator without additional financial involvement. The Managing Director informed the members that such an action is

necessary in order to revamp the activities of the Corporation in the field in the context of increased target fixed for 1988-89. It was pointed

out by the MD that Sr. Assistants will posted with the above mentioned Re-designation on the basis of merit cum seniority but not on

seniority alone. The post will carry the same scale of pay with the Sr. Assistant and those fitted with these re-designated posts will be

transferable as before. It was further informed by the MD that the proposed Assistant Development Officer/Extension Officer/Field Officer

will discharge their duties under the over all supervision and control of the Development Officer. Broadly speaking it was pointed out by

the MD that Development Officer in the matter of identification and selection of beneficiaries, preliminary enquiry regarding eligibility of

beneficiaries to take our scheme, over seeing the implementation of schemes by them, liaison with the banks, recovery of loan etc. the

financial power will however be continued to be exercised by the DO as at present.

On a careful examination of the proposal submitted by the MD the members were agreed to take action as proposed. It was however

decided that the re-designated posts should be called as Assistant Development Officer.

(B) In view of the increased load of work as also for smooth functioning of the Branch Officers, it was also proposed by the MD to upgrade

some posts of Development Officers and to create some zones. Though the members were agreed to this in principle, they advised the MD to

work out financial implication for the proposed up-gradation of some posts of Dos and also the zones and place before the members in due

course of time for further consideration & decision.

AGENDA ITEM NO.8:-

On the creation of the post of Asstt. Dev. Officers that Board has no objection but accepted on principal.

The powers and functions of the A.D.O should be defined before proceeding further in the matter. Chairman raised the issue of promotion

of zonal officers. The Board decided that the recruitment of this posts may be made from Senior most Dev. Officers.

1. The present proposal for re-designation of 6 senior Asstt. As A.D.O. is accepted.

2. But henceforth No. Sr. Asstt. Other than those having qualifications less than graduate will be accepted for the post of ADO as involves

more responsibilities demanding higher education to dispense with the assigned duty involving increasing financial responsibility of various

nature requiring legal sense.

AGENDA ITEM NO.10

Discussion on pending issue of promotional matter of 33 Nos. of Jr. Asst. to Sr. Asst.

The Managing Director informs the members of the Board that due to some irregularity committed by the office in few years back, 33 nos. of

Jr. Asst. was deprived from the legitimate demand. Accordingly the meeting of the Board of Directors held on 27/07/03 took a decision to

promote all the 33 nos. deprived Jr. Asst. to their next higher post subject to approval of the Govt. The proposals for promotion was

submitted to the WPT & BC Dept. vide No.SCDC/ESTT/185/94/PT-I/67 dated 23/08/05 and the WPT & BC Dept. have suggested for taking

decision on promotional matter by the Croprn. Of its own. The Managing Director also informs that the office memorandum

No.B.W.15/2002/PT/76 dated 19/03/04 issued from the Finance Dept. (Budget) G.O.A indicated in case of promotion for non-gazette post

the Appointing Authority is competent for promotion.

After discussion and going through the details about additional financial burden of the Crop. The Board has taken the following decision.

I. All the members of the Board of Directors decided to give justice to all the deprive Jr. Asst. promoting to the next higher post of Sr. Asst.

with immediate effect on the existing pay scale of Sr. Asst. Rs.3940-90-4480-120-5200-EB-175-6600-250-8100-325-8425. The vacancy arise due to promotion will be abolished as per norms, the Board decided.

II. To maintain the uniformity of staffing pattern of the Branch Offices of the Crop. The post of ASST. Development Officer requires

separate identity and higher pay scale. The Board decided to allow the pay scale of Rs.4120-90-4480-120-5200-175-5550-EB-175-6600-

250-8100-325-10050, to the ADO. Sr. Asstt. having minimum qualification of graduate to be promoted to the post of ADO with a view to

post in Branch Office. (Field)

III. To give effect the grievances of 33 deprived Jr. Asstt. A chain of promotion is required to be given from Jr. Asstt. to Zonal Officers. The

Board resolved to approve the procedure as per vacancy and up grading 13 Jr. Asstt. to Sr. Asstt.â??

10) Thus, from the above, the relevant point which is required to be decided is that when the 2005 Rules do not prescribe minimum educational

qualifications for being considered entitled promotion from feeder post to the post of ADO, whether it is open for the respondents No.1 and 2 to refer

to the resolutions dated 14.03.1998 and 09.09.1994 and prescribe that to be entitled to promotion from the cadre of Senior Assistant (SA) to the cadre

of Assistant Development Officer (ADO), an employee must be a Graduate with 5 years of qualifying service.

11) As indicated herein before, it is the projected case of the respondents No.1 and 2 that the petitioners cannot be promoted to the next higher post of

ADO as they do not possess the requisite educational qualification. The learned standing counsel for the respondent Nos.1 and 2 has submitted that

the minimum educational qualification to be promoted the post of ADO is Graduate. On a perusal of the provisions of the 2005 Rules, it is seen that

Rule 13 and 14 provides for promotion, but it does not prescribe for a minimum educational qualification of Graduate as eligibility for promotion from

the post of SA to the post of ADO.

12) The learned Standing Counsel for the respondent Nos. 1 and 2 had submitted that by minutes of the meeting Board of Directors dated 09.09.1994

and 26.02.2008, it was decided that SA having qualification of Graduate will be eligible for being considered for promotion to the post of ADO.

13) Thus, it is seen that in the 2005 Rules the authorities had the power to prescribe qualifications and even if cognizance of resolution dated

09.09.1994 is not taken as the same was prior to the 2005 Rules coming into force, it is seen that vide resolution dated 26.02.2008, which is after the

2005 Rules had come into force, the respondent No.1 had prescribed that SA having a minimum educational qualification of Graduate degree would be eligible to be considered for promotion.

14) In this regard, it is seen that in the case of Triloki Nath Khosa (supra), the Supreme Court of India had laid down the ratio that though persons

appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of

Executive Engineers, be classified on the basis of educational qualifications and thereby upheld the rule providing that graduates shall be eligible for

such promotion to the exclusion of diploma-holders does not violate Articles 14 and 16 of the Constitution of India. Therefore, the ratio of the said case

does not help the petitioners.

15) Thus, in light of the decision in the case of Triloki Nath Khosa (supra), the Court is unable to hold that the resolution dated 26.02.2008 and the

previous resolutions providing that Graduate SAs shall be eligible for being considered for promotion from the post of SA to ADO is not sustainable or

violative of Article 14 and 16 of the Constitution of India, as such, in view of the discussions above, this writ petition fails and is dismissed. The parties

are left to bear their own cost.