

(2001) 07 GAU CK 0029
In the Gauhati High Court
Case No : Writ Petition (C) No. 4149 of 2001

Mantu Narzary and Another	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 05-07-2001

Acts Referred:

Assam Transport Service (Recruitment and Promotion to the Post of Assistant Enforcement Inspector) Orders, 1990 — Rule 3

Citation : (2001) 2 GLT 278

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : S.S. Dey, M. Nath and C. Bhattacharjee, for the Appellant; G.A., P.K. Goswami, A.K. Bhuyan and B. Bhuyan, for the Respondent

Judgement

D. Biswas, J.—Heard Mr. S.S. Dey, learned counsel for the petitioners and also Mr. P.K. Goswami, learned senior counsel for the private respondents. Also heard Mr. P.K. Musahary, learned State counsel.

2. During the course of argument it has been agreed that the petition in its entirety may be disposed of at this stage.

3. The petitioners are working as Enforcement Checkers in the Transport Department, Govt. of Assam. The terms and conditions of their services are governed by the Assam Transport Service (Recruitment & Promotion to the Post of Assistant Enforcement Inspector) Orders, 1990. These Rules have been framed, by the Governor under proviso to Article 309 of the Constitution. Rule 3 provides that 50% of the posts in the cadre of Assistant Enforcement Inspector shall be filled up by direct recruitment through competitive examination in the manner prescribed in para 5(2) and the remaining 50% of the posts shall be filled up by promotion from amongst the Enforcement Checkers.

4. The petitioners are aggrieved because in this year (2001) 30 (thirty) posts of Enforcement Inspectors fell vacant and according to the learned counsel under

the Rules at least 17 of these vacancies were required to be filled up by promotion from amongst the Enforcement Checkers. But the authority concerned instead of filling up the posts by promotion as per provisions of Rule 3 filled up all the posts by the private respondents by ad hoc appointment. Hence, this petition for quashing the orders of appointment of the private respondents and also for a direction, to the authority concerned to consider the case of the writ petitioners for promotion to the post of Assistant Enforcement Inspector.

5. There is no controversy at the Bar that 50% of the vacancies are required to be filled up by promotion. It is also not definite whether 17, out of the 30 posts filled up in the year 2001 are required to be filled up by promotion. Therefore, I propose to leave this matter at the discretion of the State authorities for calculation. However, the fact remains that the vacancies which are required to be filled up by promotion from and amongst the Enforcement Checkers can not be filled up by any outsider by direct recruitment. The petitioners, who are working as Enforcement Checkers, have reasons to be aggrieved, as they have not been considered for promotion. Situated thus, it would be appropriate to call upon the authority concerned to work out the number of vacancies to be filled up by direct recruitment and by promotion. The vacancies that will be available for promotion definitely will have to be filled up by eligible Enforcement Checkers after selection by the Committee in accordance with the provisions of Rule 5(2). The posts available for direct recruitment are to be filled up by direct recruitment only after completion of selection process in accordance with the provisions of the Rules.

6. The situation as on today is that all these 30 posts are being held by ad hoc appointees and their term is also going to expire soon. The appointment letter dated 12.3.2001 provides that they are appointed on ad hoc basis for a period of four months only. The second para in the appointment letter also stipulates that they will have to appear before the selection committee for regularisation/permanent appointment. In this connection, we may refer to the right and status of the ad hoc appointees as decided by a Division Bench of this Court in *Hemanta Pegu v. State of Assam* reported in 1988 (1) GLJ 383. In para 33, the Division Bench held as follows :

"The next question is the validity of the orders of discharge. An appointment under Regulation 3(f) also has a basic contractual element in it and such appointment also creates mutual rights and obligations between the Government and the incumbent and, therefore, appointment under Regulation 3(f) cannot be said to be a purely time limited temporary appointment so as to automatically come to an end at the expiry of that period. Till the Commission on consultation recommends the select list and the persons selected are appointed the Regulation 3(f) appointees are expected to continue to hold the posts. If during this period the incumbent is to be deprived of his post it can be done only by complying with the provisions under Article 311(2)."

7. It appears that the private respondents appointed without selection still have a

right vested in them to get an opportunity to appear before the selection committee to prove their worth to continue in service as regular employees. Therefore, it would be appropriate to deal with the case of the writ petitioners as well as the ad hoc appointees simultaneously. The best course in the given situation will be to issue directions to the State-respondent to initiate process for direct recruitment for filling the Vacancies as per Clause (a) of Rule 3 and also to initiate process simultaneously for promotion to the post of Assistant Enforcement Inspector as provided in Clause (b) of Rule 3. After completion of above exercise, the posts shall be filled up by eligible candidates.

8. The writ petition is accordingly disposed of. A copy of this order be furnished by the learned State counsel to the appropriate authority for initiation of necessary steps as directed above. Till the process is completed, in view of the ratio available in the Division Bench, judgment, referred to above, the ad hoc appointees may not be disturbed. However, they will have to go if they fail to qualify in the Selection Process for appointment against the vacancies available for direct appointment only.

The connected Misc. Case No. 937/2001 also stands disposed of.