(2009) 07 GAU CK 0015

In the Gauhati High Court

Case No : Writ Petition (C) No. 5022 of 2008

Mitradev Changkakoty APPELLANT

Vs

Assam State Transport Corporation and Others RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Citation : (2010) 4 GLR 606

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : N. Choudhury, for the Appellant; U. Baruah, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—While challenging the Annexure-11 order dated 15.11.2008 by which the earlier officiating appointment/promotion of the petitioner to the post of Internal Auditor was cancelled, the petitioner has also made a prayer for his promotion to the post of Assistant Station Superintendent (ASS) with effect from 13.11.2003, the date on which his juniors were so promoted. The question involved is as to whether the petitioner should get the same service benefits as that of his juniors during the period when he was on deputation.

2. The petitioner is Master of Commerce (M.Com). He has also passed the Certificate Course in Computer Programming. He was appointed as Lower Division Assistant (LDA) along with some others. Such appointment was made by order dated 27.7.1988. In paragraph 3 of the writ petition, the petitioner has given the names of those others who were also appointed alongwith him. They are Shri Prasanta Kumar Baruah, Shri Paresh Saikia (2), Shri Narayan Chandra Das, Shri Jayanta Bora and Shri Chirajeeb Pachani. The petitioner was allowed to work as Audit Assistant vide order dated 11.7.1995.

3. While the petitioner was working as Audit Assistant, he was sent to District Primary Education Programme and thereafter to Assam Sarba Siksha Avijan Mission, in the year 1998. The petitioner remained on deputation for long 10

(ten) years and while on deputation, he occupied the post of Finance and Accounts Officer. He was reverted to the parent department, i.e., ASTC by order dated 7.7.2008.

4. It is the specific case of the petitioner that while he was on deputation, some of the above named persons, to be specific, Shri Prasanta Barua, Shri Baleswar Deori and Shri Chirajeev Pachani were promoted to the post of Assistant Station Master (ASM) directly from the post of Lower Division Assistant (LDA). Such promotion was effected by order dated 13.11.2003. Similarly, Shri Paresh Saikia (2) and Shri Jayanta Bora were also promoted to the post of Assistant Station Superintendent (ASS). The petitioner has further indicated that one Shri Narayan Chandra Das was also appointed alongwith the petitioner as LDA was promoted to the post of UDA on 2.6.2004. Some others, namely, Shri Dwijen Baruah, Shri Biren Saikia, Shri Ajit Neog, also junior to the petitioner were promoted to the rank of ASS by order dated 13.11.2003, order dated 26.5.2008 and order dated 1.9.2006 respectively. The petitioner has annexed the copies of the orders of promotion to the writ petition.

5. It is in the aforesaid fact Situation, the petitioner on being reverted to the parent department, made a grievance to the authority for his promotion to the post of UDA and thereafter ASS at par with his juniors. In paragraph 6 of the writ petition, the petitioner has given further instances of promotion of LD As to the post of ASS in 2007 and 2008. The persons named are Shri Narayan Ch. Das, Shri Rana Gogoi and Shri Raju Baruah who had been promoted to the post of ASS by orders dated 6.6.2008, 8.8.2008 and 7.11.2007 respectively.

6. The petitioner was promoted to the post of UDA with effect from 2.6.2004 by annexure 4 order dated 25.8.2008. Such promotion was granted to him in view of the fact that his juniors were promoted to the post of UDA, while the petitioner was on deputation. However, as indicated above, his juniors were further promoted to the post of ASS. The petitioner made further grievance for his promotion to the said rank.

7. By annexure 8 order dated 12.11.2008, the petitioner was allowed to officiate as Internal Auditor in the time scale of pay of Rs. 3580-90-4480-120-4720-EB-120-5200-175-6600-250-8100-325-8750. The petitioner was posted in the office of the Station Superintendent, ASTC, Tinsukia. At the time of such promotion, he was working in the office of the Station Superintendent, ASTC, Dibrugarh. Enabling him to join the promotional post at Tinsukia. The petitioner was released from Dibrugarh by Annexure 9 order dated 15.11.2008. The petitioner by his Annexure 10 letter dated 17.11.2008, submitted his joining report in respect of the promotional post of Internal Auditor. However, in the interregnum, the impugned order dated 15.11.2008 (Annexure 11) was issued cancelling the order of promotion dated 12.11.2008 (Annexure 8). Admittedly, such cancellation of promotion was without any notice to the petitioner and it is on that count the petitioner asserts that there has been gross violation of principles of natural justice.

8. The respondents have filed two counter affidavits, one dated 5.1.2009 and the other dated 10.6.2009. In the first counter affidavit, the stand of the respondent corporation is that the post of ASS is not a promotional post for LD. As but the incumbents named by the petitioner had been appointed to the said post as they were sitting idle without any works.

It was in such circumstances, the said incumbents were allowed to work as ASS and eventually their services were regularised. It is the stand of the respondent corporation that since the post of ASS is not a promotional post for the LD. As, the petitioner cannot claim promotion to the said post. As regards the promotion to the post of Internal Auditor, it is the stand of the respondents that such promotion was given to the petitioner due to oversight. According to the respondent corporation, the petitioner being a member of the ministerial cadre and the post of Internal Auditor being in the Accounts cadre, he is not entitled to get the promotion to the post of Internal Auditor.

9. In the second counter affidavit, the respondents have referred to the minutes of discussion of the meeting of the corporation held on 21.5.1970 followed by the one held on 7.6.1977. Referring to these two documents, it is the stand of the respondents corporation that the accounts cadre of the corporation was restructured and the post of auditor was included in the accounts cadre and the petitioner being in the ministerial cadre, cannot be promoted to the post of Internal Auditor in the accounts department.

10. Mr. N. Choudhury, learned Counsel for the petitioner has argued that since the juniors to the petitioner have been promoted to the post of ASS, the petitioner should also be promoted applying the same yardstick and parameter at par with the said juniors. As regards the promotion of the petitioner to the post of Internal Auditor, he submits that as per the Assam State Road Transport Corporation Employees Service Regulations, 1971, the said post belongs to ministerial cadre and the petitioner being a member of the ministerial cadre, there is no bar for his promotion to the said post of Internal Auditor and that the petitioner was rightly promoted, which, however, was unilaterally cancelled.

11. Ms. U. Baruah, learned standing counsel, ASTC, on the other hand submits that the Accounts Department having been restructured and the post of Auditor having been incorporated in the Accounts Cadre, the petitioner cannot claim promotion to the post of Internal Auditor. As regards the purported promotion of the juniors to the post of ASS, she submitted that the said incumbents were never promoted to the post of ASS but their services were utilised in the said post. In due course in consideration of their satisfactory services, they were regularised in the post of ASS. Thus, according to her, the petitioner cannot claim that he should also be appointed to the post of ASS at par with his juniors, as the same was not a case of promotion.

12. I have given my anxious consideration to the submissions advanced by the learned Counsel for the parties and the materials available on records.

13. The occasion for the respondent corporation to file the second counter affidavit arose when Mr. Choudhury, learned Counsel for the petitioner referring to the aforesaid Regulations of 1971, which was notified in the Assam Gazette of October 1985 had submitted that the post of Internal Auditor is very much in the ministerial cadre. In the schedule to the said regulations, the post of Internal Auditor is included at Sl. No. 2 of the Class 11 cadre of ministerial officers. Class 11 cadre of Ministerial Officers includes the post of LDA, UDA, Internal Auditor and Head Assistant. It also includes the post of Stenographer and Confidential Assistant-cum-Stenographer. Thus, there is no manner of doubt that as per the said regulation, the post of Internal Auditor is in the cadre of ministerial officers (Class-II) and in the hierarchy of the promotional avenues of the LD As. If it was the intention of the respondent corporation to exclude the post of Internal Auditor from the ministerial cadre, it would have been spelt out in explicit terms in their minutes of meeting held in 1970 and 1977, about which reference have been made above.

14. While the 1970 minutes of discussion does not through any light, the 1977 minutes of discussion, under item No. 7, states about re-organisation of the accounts cadre. The item No. 7 of the minutes of discussion also speaks of transferability of the employees of the Corporation to various branches. On perusal of the said minutes of discussion, it appears that the transfer of the employees of the Corporation from one branch to, another was prevalent. Further, as per the said item No. 7, 75% of the post of Auditors shall be filled up from amongst the employees of the Corporation by means of selection.

15. From the above, it will be seen that both under the regulation of 1970 published in the official gazette on 9.10.1985 as well as under the aforesaid minutes of discussion of the respondent corporation, the post of Internal Auditor is a promotional post for the officers of the ministerial cadre. As noted above, the petitioner was promoted to the post of UDA at par with his juniors. If we go by hierarchy in the ministerial cadre, what we find is that the post of Internal Auditor is included just above the post of UDA. Coupled with this, the petitioner although was appointed as LDA but was posted as Audit Assistant vide order dated 11.9.1995, which fact the respondents have not disputed in their counter affidavit.

16. The plea of the respondents that the incumbent who were junior to the petitioner had been appointed as ASS as they were sitting idle in the post of LDA and thereafter their services were regularised and the said circumstances cannot be equated with the case of the petitioner cannot be accepted. Here is a case in which the juniors to the petitioner got higher service benefit than the petitioner, as they were sitting idle and there was no work for them. On the other hand, the petitioner who was sent on deputation and whose services were utilised in the post of Finance and Accounts Officer, has been deprived of the said benefits. Thus, here is a case of conferring benefits to those who were sitting idle in preference to the petitioner, who was rendering his services in the post of

Finance and Accounts Officer.

17. The principle relating to "Next Below Rule" has been emphasised in the service jurisprudence in the matter of promotion and the said principle is applied when juniors are given promotion ignoring the case of seniors; In the instant case, the petitioner was on deputation arte (luring the period of deputation, his juniors were conferred with certain service benefits. However, while doing so, the case of the petitioner was never considered although he was at par with his juniors.

18. Thus, it was legitimately agitated by the petitioner for granting him the service benefits at par with his juniors. Although he was provided with the promotional post of UDA and thereafter Internal Auditor but the promotion to the post of Internal Auditor was taken away from him without affording him any opportunity of being heard. It is an admitted position that before issuing the impugned order, the petitioner was not served with any kind of notice.

19. For all the aforesaid reasons, I set aside and quash the impugned order dated 15.11.2008 (Annexure 11) and the petitioner shall be deemed to be holding the promotional post of Internal Auditor all throughout. He will be entitled to all consequential benefits.

20. It is further provided that his case for further service benefits at par with the juniors shall be considered by the respondent corporation in accordance with law.

21. Writ petition is allowed leaving the parties to bear their own costs.