
(1999) 01 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 1439 of 1997

Niren Baruah and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 29-01-1999

Acts Referred:

Assam Engineering (Public Works Department) Service Rules, 1978 — Rule 22, 22(3)

Citation : (1999) 1 GLT 72

Hon'ble Judges : M. Sharma, J

Bench : Single Bench

Advocate : G.K. Bhattacharyya, B.C. Chakravarty and B.C. Kalita, for the Appellant; K.H. Choudhury, N. Dutta, B.K. Sarma, M.K. Choudhury, A. Roy and Abhijit Roy, for the Respondent

Judgement

M. Sharma, J.—This writ petition is preferred against the impugned judgment and order dated 28.2.98 passed by the learned Assam Administrative Tribunal, Guwahati in Case No. 2 ATA/96, 17 ATA/96, 16 ATA/96 (Misc), 9 ATA (Misc)/96 and 10 ATA (Misc)/96 challenging the orders for a direction to set aside the award of the learned Tribunal holding the Respondents 6, 7 and 8 are seniors to the Petitioners which prejudiced the right of the Petitioners.

2. The issues involved in this case in brief is that the interse seniority of the Petitioners who are direct recruits Assistant Engineers, Public Works Department vis-a-vis Respondents 6, 7 and 8 who are also direct recruits Assistant Engineers and the Respondents 9 to 111 who are the promotees to the rank of Assistant Engineers of the department

3. The five writ Petitioners were direct recruits of 1988 and the Respondents 6, 7 and 8 were also appointed on ad-hoc basis vide notification dated 29.7.85 under Regulation 3(f) of the APSC (I&F) Regulation, 1951. APSC issued advertisement for the post of Assistant Engineers. Originally the Petitioners were appointed on ad-hoc basis vide notification dated 12.9.86, 29.9.86 and 28.11.86. As it is seen the Petitioners were appointed on various dates in the year whereas the

Respondents 6, 7 and 8 were appointed vide notification dated 29.7.85.

4. The APSC published a list of 182 candidates interviewed by the department and recommended for recruitment as Assistant Engineers (Civil) under Public Works Department. The names of writ Petitioner appeared at Serial Nos. 3, 4, 5, 21 and 61 whereas the names of Respondents 6, 7 and 8 appeared at serial Nos. 48, 50 and 66. The appointment of Respondents 6, 7 and 8 as Assistant Engineers were regularised w.e.f. 1.7.87 vide notification dated 1.7.87 (Annexure-IV). On 25.11.87 APSC published another list of 57 candidates and both lists were combined by the A.P.S.C. and forwarded the consolidated list of 239 candidates (182 + 57) for recruitment Annexure-IV). The appointment of writ Petitioners and other candidates serving on Ad-hoc basis were regularised w.e.f. 1st January, 1988. The notification mentioned that interse seniority would be fixed later on. In the consolidated list the names of the writ Petitioners appeared at Sl. Nos. 1, 2, 3, 14 and 35 vide notification dated 11.5.88 (vide Annexure-V). Interse seniority list of the Assistant Engineers published on 6.11.1992 the names of the Respondents 9 to 111 appeared at Sl. No. 254, 255, 256, 271 and 303 and the names of Respondents 6, 7 and 8 appeared at Sl. No. 293, 204 and 205. Thus the promotee Respondents were shown senior to the writ Petitioners which revealed from seniority list dated 6.11.92 vide Annexure-VI. Respondent No. 7 of this writ petition filed appeal before the learned Administrative Tribunal challenging the gradation list dated 6.11.92 contending that as his appointment as Asstt. Engineer had been regularised w.e.f. 1.7.1987, he could not have been placed below the recruits/appointees of 1988. The writ Petitioner along with other also filed another appeal being No. 130 ATA/1994 before the Assam Administrative Tribunal challenging the said seniority list. While disposing of the appeal the learned Tribunal Vide its order dated 8.2.95 directed the department to deal with the case as per the order of the learned Tribunal passed in 36 ATA/1994. Accordingly interse seniority list dated 6.11.92 was partially modified in compliance with the direction of the learned Tribunal. Accordingly, the name of the writ Petitioners appeared at serial Nos. 147, 148, 149, 164 and 196 whereas the names of Respondents appeared at Sl. Nos. 186, 187 and 188 showing the promotee Respondents were all placed below the direct recruits regularised/recruited as per the recommendation of the APSC as stated above. Now interse seniority list is dated 15.11.95. The Respondent No. 9 and others (promotee Respondent) filed an appeal before the Hon'ble Assam Administrative Tribunal, Guwahati challenging the seniority list dated 15th November, 1995. Similarly other also filed appeals and Misc. Application as mentioned above. On 28.2.97, the learned Assam Administrative Tribunal by a common judgment disposed of the above appeal/case holding:

(i) that the Respondent Nos. 6, 7 and 8 whose services were regularised w.e.f. 1.7.1987 should be treated as Assistant Engineers of 1987 batch.

(ii) the writ Petitioners and other direct recruit whose services were regularised w.e.f. 1st January, 1988 and thereafter were to be treated as appointees of 1988;

(iii) the promotee Assistant Engineers who are promoted in October and November, 1988 should be treated as promotees of 1988;

(iv) As per Rules 22(3) of the Rules, the promotee Assistant Engineers of 1988 would rank senior to the direct recruit Assistant Engineers of 1988.

By this direction, the learned Tribunal modified the judgment dated 31.12.94 in Case No. 36 ATA/1994, to that extent.

5. I have heard Mr. G.K. Bhattacharyya, learned Counsel for the Petitioners and also heard Mr. learned Counsel for the Respondents.

6. The main thrust of the arguments on behalf of the Petitioners is that the Petitioners having been selected by the APSC in the year 1987 they should have been regularised in the same year with the Respondents 6, 7 and 8 and if that had been done they would have been senior to the promotee Respondents who were promoted in the year 1988. Further case of the Petitioner is that they were appointed as direct recruits in the year 1988 and accordingly by operation of Rule 22 of the Assam Engineering (P.W.D.) Services Rules, 1978, they became junior to the promotees and accordingly, their seniority position were assigned below the promotee Respondents; mat the Respondents 6, 7 and 8 and the writ Petitioners were included in the same select list of the APSC published on 7.5.87 and therefore, the regularisation of the services of the Respondents 6, 7 and 8 showing above the Petitioners was not justified as the Respondents were placed below the Petitioners in order of merit. It is further urged by the learned Counsel for the Petitioners that the writ Petitioners having been included in the select list of 1987 by the APSC they should be considered to belongs to 1987 batch and their seniority should be fixed in order of merit taking them to be appointees of 1987 batch; that the seniority required to be maintained in accordance with the seniority list of the A.P.S.C. and the department had no authority to deviate from the list on their own, that the authority committed illegality while violating the merit position without any reasons and as such the impugned judgment of the tribunal dated 28.2.97 is liable to be set aside.

7. The stand of the Respondents is that the select list of May, 1987, November, 1987 or December, 1987 by themselves do not confer any right to claim the seniority on that basis. Seniority would count from the date of appointment/regularisation. As the Respondents 6, 7 and 8 have been regularised prior to the writ Petitioner they were rightly placed above the writ Petitioners as the writ Petitioners were regularised w.e.f. 1.1.88 and therefore, under the Rules they belong to 1988 batch and that under Rule 22(3) of the Rules, promotee Respondents of 1988 were rightly placed above the writ Petitioners.

8. At this point, the learned Counsel for the Petitioners submit that the APSC shown the names of the Respondents 6, 7 and 8 below the Petitioners in its list dated 7.5.87 recommended in order of merit position in the select list and since the names of Respondents 6, 7 and 8 figured below the names of the Petitioners in the merit list they are junior to the Petitioners and the past ad-hoc services

has no relevance in that matter. Further, it is submitted that since the Respondents 6, 7 and 8 were junior to the Petitioners as per the merit list, the learned tribunal committed illegality considering the Respondents 6, 7 and 8 as Asstt. Engineer of 1987 batch and Petitioners and others considered as Assistant Engineers of 1988 batch thereby holding the Respondents 6, 7 and 8 as senior to the Petitioners; that the Respondents authority committed illegality in regularising the services of the above Respondents w.e.f. 1.7.87 and the Petitioners and others w.e.f. 1.1.88 without any reasons; that admittedly the Respondents 6, 7 and 8 were junior to the Petitioners and when the Petitioners were recommended by APSC on 7.5.87 their services ought to have been regularised immediately along with the junior in that list and not with the imaginary date of 11.8.88. The learned Counsel for the Petitioner reiterated the point that the Respondents authority bound to keep the conformity of the select list of 1987 whose fact is confirmed by the consolidated list dated 3.12.87 wherein respective positions remained the same and, therefore, there is no illegality showing the names of the Petitioners below the three Respondents by the subsequent list. It is further submitted by the learned Counsel for the Petitioner that the gradation list dated 15.11.95 (Annexure-IX) was prepared on the basis of the judgment of the Tribunal dated 3.12.94 and 8.2.94 and the larger Bench of the Tribunal committed a grave illegality in sitting over its own judgment while passing the judgment dated 28.2.97 (impugned).

9. The teamed counsel for the Respondents on the other hand submits that the Respondent No. 7 filed an appeal being No. 36 ATA/96 before the Tribunal making grievances against the seniority list (Annexure-VI) to the writ Petitioners in which his name was given below the promotee Respondents of 1988 batch claiming that the Respondent No. 7 belongs to 1987 batch under direct recruit including the Petitioners who were appointed in the year 1988. In this writ petition, the Petitioners along with others were direct recruits and promotee Respondents were made party and in that case before the tribunal the present Petitioners did not make any objection to the claims of Respondent No. 7. The said appeal was disposed of by its order dated 31.12.94 (vide annexure-VII) to the writ petition wherein it was held that Respondent No. 7 should be regarded belongs to the year 1987 batch. It is submitted that natural consequence of this judgment is that the Respondent No. 7 in rank senior to both the direct recruits and promotees of 1988. The learned Counsel for the Respondent has pointed out that the present Petitioner did not oppose the claim of the Respondent No. 7 inspite of the service of notice on them in the appeal in the Tribunal bearing No. 130 ATA/94 which was disposed on 8.2.95 (Annexure-VIII) with the direction to the department to deal with the case of the Petitioners in terms of the order passed in appeal No. 36 ATA/94 earlier filed by Respondent No. 7. On the situation, the learned Counsel for the Respondent further submits that in the aforesaid position, makes it clear that the Respondent No. 7 belongs to 1987 batch of direct recruits and the Petitioners promotee Respondents belong to 1988 batch and this position was no longer challenged by and between the parties and

therefore, no further proceedings would attract the principle of resjudicata. It is further submitted that pursuant to the aforesaid order of the Tribunal (Annexure-IX) seniority list was published on 15.11.95. The promotee Respondents approached the Tribunal by filing Case No. 2 ATA/96 for quashing of 1995 seniority list in which they were placed below the direct recruits of 1988; that the present Respondent No. 7 was also responded to the same making a grievance against his placement in the seniority list although he was treated to be of 1987 batch. In appeal, it is specifically pointed out that the promotee Respondents did not dispute the regularisation of the services of the Respondent No. 7 and 2 others in July, 1987; and that even now in this proceedings they do not dispute the fact that the Respondent No. 7 belongs to 1987 batch by virtue of which he will automatically rank senior to them as well as the direct recruits of 1988 including the writ Petitioners. The grievances of the Respondent No. 7 was in respect of his placement at Sl. No. 187 instead of 141 and he also claimed seniority over six Subordinate Engineers promoted after their securing AMIE Certificate as direct recruits.

10. As the litigation is going on between the parties claiming and counter claiming of their seniority on the basis of 1987 regularisation order, the Tribunal constituted a larger Bench so as to resolve all the issues involved wherein, as it is seen, the learned Tribunal dealt extensively all the disputes and grievances of the parties concerned. Apparently, it is seen the claim of the writ Petitioner is that they should be treated as to 1987 batch instead of 1988 batch and accordingly they should be given seniority over the promotee Respondents. Except the five writ Petitioners, every one has accepted the judgment of the Tribunal and these five writ Petitioners cannot represent other direct, recruits.

11. After examining the impugned judgment of the larger Bench of the Tribunal, I am of the view that there is no infirmity or illegality of this order, the seniority of the Respondents 6, 7 and 8 was considered on the basis of the recruits of 1987 batch and they were rightly given the seniority over the writ Petitioners. I am of the view that after going through the impugned judgment, I hold that the regularisation of the services of Respondent No. 7 w.e.f. 1.7.87 has not been challenged by any one over the last more than 11 years and therefore at this stage, the writ Petitioners cannot take this point for claiming seniority. It is no longer res-integra after the order of the Tribunal in Case No. 36 ATA/94 and Case No. 130 ATA/94 by which the Respondent No. 7 was directed to be treated as belonging to 1987 batch. In my view, such a long settled position cannot be allowed to be disturbed now. Learned counsel for the Respondents in support of this claim relied Som Raj and others etc. Vs. State of Haryana and others, - Government of Andhra Pradesh and Others Vs. M.A. Kareem and Others, which in my view covers the case of the Respondents.

In view of the above discussion, this writ petition is rejected. No costs.