
(2003) 02 GAU CK 0011
In the Gauhati High Court
Case No : WP (C) No. 7026 of 2000

Puspa Kanta Sharma

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 17-02-2003

Acts Referred:

Citation : (2003) 3 GLR 103 : (2003) 2 GLT 434

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : A.B. Choudhury, A. Ahmed and I. Rafique, for the Appellant; A. Thakur, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Heard Mr. A. B. Choudhury, learned counsel for the petitioner. Also heard Mr. A. Thakur, learned State Counsel appearing on behalf of the State respondents. None appears on behalf of private respondent Nos. 5 and 6 notwithstanding notice.

2. The only grievance in the instant case is that the petitioner, admittedly being senior to respondent Nos. 5 and 6, working under respondent No. 2, Director General of Police, Assam, Ulubari, has been denied his due promotion from the Upper Division Assistant to the rank of Head Assistant when his juniors, i.e., respondent Nos. 5 and 6 were promoted to the post of Head Assistant by the impugned order dated 21-10-2000 issued by respondent No. 3, the Deputy Inspector of Police, Assam, Guwahati. According to him, the criteria for such promotion is "seniority-cum-merit" and in support of this contention, reliance has been placed on" the government decision/instruction vide No. ABP.178/74/2 dated 26.8.1974 and No. ABP. 178/74/6 dated 8.7.1977 (Annexures-4 and 5 to the writ petition respectively.

3. Responding to the averments and allegations made in the writ petition, the respondents filed affidavit-in-opposition virtually admitting the claim of the

petitioner as regards his seniority over the respondent Nos. 5 and 6. The respondents also admitted that the selection for such promotion was being made on the basis of "seniority as well as efficiency" in accordance with the above referred government decisions/ instructions. But the said affidavit did not spell out the reason for not recommending the name of the petitioner for promotion to the higher post as claimed.

4. In paragraphs 7 and 8 of the affidavit-in-opposition, the respondents averred follows :-

"7. That the deponent does not dispute the statement made in paragraph 9 of the writ petition and that it is a fact that the petitioner is marginally senior to the respondent Nos. 4, 5 and 6.

8. That with regard to the statements made in paragraphs 10, 11, 12, and 13 of the writ petition, the deponent begs to state that it is not a fact that there is not service rule governing the service condition of ministerial staff under Police Department. It is also not correct to presume that on any matters of promotion seniority should be the only criteria and no other consideration would be arise for considering the promotion to the post of H. A. The H. A. being the person supervising the works of other ministerial staff in the Office of Supdt. Of Police and Commdt. BNs and other offices of Police Deptt. His efficiency in addition to the seniority is required to be accounted which considering the promotion. So a Board was constituted to select the suitable candidates on the basis of seniority as well as efficiency. This is done in accordance with Government decision vide No. ABP. 178/74/2 dated 26.8.1974 and No. ABP. 178/74/6 dated 8.7.1977 as annexed by the petitioner in Annexures-4 and 6. The name of the petitioner was not recommended."

5. Mr. Choudhury, learned counsel for the petitioner, has contended that since the competent authority adopted the criteria of seniority-cum-merit/efficiency for the promotion from the post of Upper Division Assistant to the rank of Head Assistant and petitioner's seniority has also been admitted, the petitioner's entitlement for such promotion may be approved by this Court and direction may be given for petitioner's promotion with all the consequential benefits to which the petitioner is entitled to. To bolster up his submission, the learned counsel for the petitioner has relied upon several decisions of this Court as well as Hon'ble Apex Court. The cases are as follows :-

1. AIR 1977 SC 1868 (S. Krishnamurthy v. The General Manager, Southern Railway).

2. AIR 1979 SC 1060 (The Distt. Registrar Palghat and Ors. v. M. B. Koyyakutty and Ors.) (refer to para 30 at page 1066).

3 State of Gujarat Vs. S. Tripathy and Others,

4. (1998) 4 SCC 114 (Vimal Kumari v. State of Haryana and Ors.)

5. Anil Kumar Puri Vs. Presiding Officer, Labour Court, Chandigarh and Another,
6. (2001) 2 GLT 596 (Midul Saikia v. FCI and Ors.)
7. 2001 (2) GLJ 383 (Bhajan Chandra Debnath v. State of Tripura and Anr.).

6. The Court has carefully gone through all those judicial authorities as cited above. Taking into account the principles of law laid down therein it is held that once State acknowledges the seniority of the incumbent and the criteria to be the "seniority-cum-merit" as well and in absence of any cogent reason for denying such due promotion to him, the petitioner is entitled to his promotion retrospectively, i.e., from the date of promotion of his juniors with all the consequential benefits. That being the legal position, this Court does not propose to burden this judgment with the elaboration and discussion on the above cited rulings and is inclined to allow the

7. Consequently the respondents particularly respondent Nos. 2 and 3 are directed to promote the petitioner from the date when his juniors, i.e., respondent Nos. 5 and 6 were promoted giving him all the consequential benefits to which he is entitled to in accordance with law. The authorities are directed to do the needful as indicated above as expeditiously as possible preferably within a period of 3 (three) months from the date of receipt of this order.

8. The writ petition accordingly stands allowed. However, considering the facts and circumstances, no order is passed as to costs.