
(2020) 04 GAU CK 0014
In the Gauhati High Court
Case No : Writ Petition (C) No. 779 Of 2015

Ratan Chandra Gogoi And 2 Ors

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 28-04-2020

Acts Referred:

Assam supply service rules 1989 — Rule 11(2), 13(3)
Constitution Of India, 1950 — Article 226

Citation : (2020) 04 GAU CK 0014

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : B.D. Konwar, J.M. Konwar, Eliza Sikdar, N. Goswami

Final Decision : Dismissed

Judgement

1. Heard Mr. B.D. Konwar, learned senior counsel, assisted by Mrs. J.M. Konwar and Ms. Eliza Sikdar, learned counsel for the petitioners. Also

heard Mr. N. Goswami, learned Govt. Advocate for the State of Assam.

2. This writ petition under Article 226 of the Constitution of India has been filed, inter-alia, (i) to assail the impugned order dated 07.01.2015, thereby

rejecting the proposal for promotion of the petitioners to the post of Sub-Inspector in the Department of Food, Civil Supplies and Consumer Affairs

(FCSCA Deptt. for short), and (ii) for a direction to the Government to accord approval for promotion of the petitioners to the said post.

3. The learned senior counsel for the petitioners has referred to the statements made in the writ petition as well in the affidavit- in- reply filed by the

petitioners against the affidavit- in- opposition filed by the respondent no. 3. It is submitted that on 09.01.2001, the petitioner no. 1 had joined service as

Junior Assistant in the office of the Deputy Director, FCSCA Deptt., Karbi Anglong

Autonomous Council, Diphu. On 14.11.1991, the petitioner no. 2

joined service as Junior Assistant in the office of the Sub- Divisional Officer (Civil), Bilasipara, Dist. Dhubri and is presently serving in the same post

in the Office of the Deputy Commissioner, Dhubri on deputation. Since 10.09.2004, the petitioner no. 3 is serving as Junior Assistant in the office of

the Directorate of FCSCA Deptt., Assam at Guwahati. It is submitted that in the month of May, 2011 the respondents had carried out an exercise to

fill up 14 vacant posts of Sub- Inspectors under FCSCA Deptt. on promotion from amongst the eligible Junior Assistants under 25% quota as provided

under Rule 11(2) of the Assam Supply Service Rules, 1989, as amended. Accordingly, for the said purpose a Selection Committee was constituted by

an order under Memo dated 20.01.2012. The written test and viva voce test was conducted on 26.12.2012. In the select list published, the names of

the petitioners appeared in sl. no. 12, 13 and 14 in order of merit. However, the selection committee had recommended only the names of first 11

candidates for promotion. It is submitted that the appointment was challenged by filing a writ petition, being W.P.(C) 7879/2005, and subject to the

outcome of the said writ petition, the selected 11 candidates were promoted by an order dated 20.06.2013 issued by the respondent no. 3. The said

writ petition was disposed of by an order dated 29.09.2014, with a direction to the authorities to pass a speaking order. Accordingly, the Commissioner

& Secretary to the Govt. of Assam, FCSCA Deptt., had passed a speaking order to the following effect:-

â??Now, therefore, having considered the facts as stated above and taking into account all factors relevant to the case, it is ordered that the

promotion to the cadre of Sub-Inspector, FCS & CA from the LDA of the amalgamated establishment of Deputy Commissioner in the Districts/ Sub-

Divisions so far made, is not irregular as the relevant rule is not specific in respect of Lower Division Assistants of Districts/ Sub-Divisions.

However, considering the facts that there are also separate avenues for promotion of the ministerial staff of the amalgamated staff of the Deputy

Commissioners eligible ministerial staff of Directorate of FCS & CA and of the Food, Civil Supplies and Consumer Affairs branches of the

amalgamated establishment of Deputy Commissioners/ Sub-Divisional officers drawing salaries under F, CS & CA Heads of Accounts for a period of

five years or more. Relevant rules need to be amended and made more specific accordingly.â??

4. It is submitted that vide a proposal letter dated 14.11.2014, the Director of FCSCA Deptt., Assam (respondent No.3) had sought approval from the

Govt. for promoting/ appointing the petitioners to the remaining 3 vacant posts of Sub- Inspectors under the Department, being the next three

candidates in order of merit as per the select list. Thereafter, by letter dated 17.12.2014, the Director of FCSCA Deptt., Assam submitted his

clarification to the Commissioner & Secretary to the Govt. of Assam, FCSCA Deptt., indicating therein that the proposal for promoting/ appointing the

petitioners to the remaining 3 vacant posts of Sub- Inspectors under the Department was in accordance with the speaking order dated 14.11.2014 and

the said authority was requested to grant approval for promotion of the said three Ministerial cadre staff to the post of Sub- Inspector, FCSCA. It is

submitted that vide letter dated 07.01.2015, the respondent no. 2 conveyed the rejection of the proposal by the Government for promotion of the

petitioners.

5. The learned senior counsel for the petitioners has submitted that the selection was conducted for filling up 14 posts of Sub- Inspectors by way of

promotion, but most arbitrarily the authorities did not fill up three promotional posts/ vacancies and, as such, the authorities had discriminated against

the petitioners herein and thereby the petitioners were deprived of a scope for getting promotion. It is submitted that the Selection Committee had no

power or authority to lay down norms for selection and, as such, their decision not to recommend the promotion of the petitioners is not sustainable on

facts and in law.

6. The learned senior counsel for the petitioners has submitted that as the Govt. had rejected the proposal for promotion of the petitioners, there is no

scope for the petitioners but to approach this Court for a suitable direction to quash the impugned order/ letter dated 07.01.2015 and for a direction to

the Govt. to grant approval for promotion of the petitioners to three vacant posts of Sub-Inspectors under the Food, Civil Supplies and Consumer

Affairs Department and its Director to promote the petitioners. It is submitted that the selection process having been initiated to fill up fourteen vacant

posts of Sub-Inspectors by way of promotion and the petitioners were ranked at

11th, 12th and 13th position in order of merit, having secured 82, 79 and 71 marks respectively, the withholding of promotion in respect of the petitioners was illegal and the petitioners were deprived of their promotion without any rhyme or reasons.

7. It is submitted that the deprivation of promotion to the petitioners was done on the basis of a criteria which was not disclosed prior to the commencement of the departmental promotion process. It is also submitted that the selection committee does not have even the inherent jurisdiction to lay down the norms for selection. It is submitted that the selection committee cannot assume powers to lay down the norms for selection or to lay down standards in addition to what is prescribed under the rules. In support of the said submissions, the learned senior counsel for the petitioners has referred to the case of Dr. Krushna Chandra Sahu & Ors. vs. State of Orissa & Ors., (1995) 6 SCC 1 w, herein the Supreme Court of India has referred to the cases of (1) Umesh Chandra Shukla vs. Union of India, (1985) 3 SCC 7,2 (2) Durgacharan Misra vs. State of Orissa, (1987) 4 SCC 646, and (3) B.S. Yadav vs. State of Haryana, 1980 Supp SCC 524.

8. It is also submitted that as the petitioners had been illegally deprived of their promotion, and as three vacant posts of Sub-Inspector still remains to be filled up under the 25% promotional quota, the Govt. ought to have granted promotion to the petitioners if required, by relaxing the rules. It is also submitted that the petitioners are the senior most Jr. Assistants in the establishment of respondent no.3 and while the petitioners had been compelled to face two rounds of litigation by filing WP(C) 8769/2005 and the present writ petition, several Jr. Assistants who were juniors to the petitioners have by now been promoted which has caused irreparable harm to the future career to the petitioners no.1, 2 and 3, who are stagnating in the said post of Jr. Assistant since 09.01.2001, 14.11.1991 and 10.09.2004 respectively.

9. Per contra, the learned Government Advocate has referred to the affidavit-in-opposition filed by the respondent no. 3. It is submitted that the Selection Committee had recommended 11 eligible candidates for filling up posts of Sub- Inspector, FCSCA from Ministerial Cadre. It is submitted that the Deputy Secretary to the Govt. of Assam, FCSCA Deptt., by a letter dated 07.01.2015, informed the Director of FCSCA Deptt. that the petitioners herein were not recommended for promotion to the rank of Sub-

Inspector per minutes of the selection committee for promotion of ministerial cadre held on 26.12.2012, as such, it was informed that as per service rules, the selection committee has to first recommend the names of the proposed candidates for their promotion and accordingly, the Director of FCSCA Deptt. was requested to adhere to the Service Rules strictly and not to send any proposal to the Govt. which is not in conformity therewith.

10. The learned Govt. Advocate had referred to the Assam Supply Service (Amendment) Rules, 1989 by which the Assam (Food and Civil Supplies)

Service Rules, 1970 was amended. It was submitted that the selection committee had the power under Rule 13 to examine the cases and recommend

names in order of preference, taking into account the suitability of persons with due regard to merit and seniority. It is submitted that the selection

committee had the power and authority to lay down the selection criteria and to recommend only the candidates found suitable and as the names of

the petitioners were not approved, the Govt. was not bound to promote the petitioners unless their names were recommended by the selection

committee. Hence, the learned Govt. Advocate justified the impugned order.

11. On the basis of submissions made on behalf of both sides, the two points which are required to be determined in this writ petition are:

i. Whether the withholding of promotion to the petitioners, who were at the sl. nos. 12, 13 and 14 in the result- sheet was illegal? and if so, whether the

impugned memo dated 07.01.2015 (Annexure- 6) is required to be set aside and quashed? and

ii. Whether the facts and circumstances of the case requires direction to be issued to the State respondents to accord approval for promotion of the

petitioners to the post of Sub- Inspectors under FCSCA Deptt.?

12. It is seen from the minutes dated 26.12.2012 of the selection committee for promotion of Ministerial Cadre to Sub- Inspector that the selection

committee consisted of three members, and all of them were the senior level officials of the FCSCA Deptt., viz., Director, Deputy Secretary and Joint

Director. The selection committee took into consideration the roster points for the 14 posts to be filled up. As per the said minutes, the selection

committee had decided to invite candidates who were eligible as on 01.01.2012 for viva voce test on 26.12.2012 to assess their knowledge, personality,

tact, energy, integrity and previous record of service as per rules. The provision

of amended Rule 13(3) of the 1970 Rules gives power to the Selection Committee to examine the cases and prepare a list of names recommended in order of preference taking into account the suitability of persons with due regard to merit and seniority. Therefore, the Court is unable to find any fault in the process of selection. Moreover, from the same process, 11 out of 14 vacant promotional post of Sub-Inspector in FCSCA Deptt. had already been filled up.

13. One of the grounds of attack against the impugned memo dated 07.01.2015 is that there were 14 vacant posts of Sub- Inspectors in the FCSCA Deptt. to be filled up by promotion and the list prepared by the Selection Committee contained 20 names, wherein the names of the petitioners appeared at sl. nos. 12 to 14, as such, the Selection Committee ought to have forwarded the names of all the three petitioners for being promoted. In this regard, it is seen that the Selection Committee consisted of three very senior officials of the Department as indicated herein before. From the minutes of the Selection Committee it is seen that in response to selection process, 20 applications were received from the Districts/ Sub- Divisions and 7 applications were received from the Directorate and after scrutiny it was found that 7 candidates did not qualify due to non submissions of the required particulars and 4 candidates were found to be Senior Assistants, however, for reasons assigned in the minutes, the candidature of two of such candidates was accepted. The test was conducted to assess their knowledge, personality, tact, energy, integrity and previous record of service. A test of drafting and reporting capability of the candidates was assessed by asking them to write a paragraph on either food security, cash transfer of subsidy, or decentralized procurement, with no marks allotted for such test. Through viva voce test, the knowledge of the candidates was tested on PDS, ATA, enforcement, reporting, departmental schemes and personality was examined for which 10 marks was allotted for each item and marks was assigned against each candidate. As per the said minutes, the candidate securing 1st position had secured 120 marks and the candidate securing the 11th position and was the last candidate recommended for promotion had secured 96 marks. However, the petitioners herein had secured 82, 79 and 71 marks respectively. The Selection Committee minutes disclose that after considering the qualities required for performing as an officer of the

Department, the Selection Committee had recommended only the first 11 candidates for appointment as Sub- Inspectors under the 25% category.

14. The Court is of the considered opinion that the Selection Committee can evolve its own classification for selection as the process and/or procedure

is not vitiated by mala fide, or in violation of the 1970 Rules. The recommendation sent by the Selection Committee with exclusion of the names of the

petitioners is found to have been taken after considering the qualities required for performing as an officer of the Department. The three highly placed

officers of the FCSCA Deptt. were the members of the Selection Committee and, as such, the Court is of the considered opinion that they would be

the best persons to understand the qualities required for the officers of their own department. The Selection Committee is constituted by high ranking

responsible officers presided over by the Director of the FCSCA Deptt., having requisite knowledge, experience and expertise to assess the service

records and ability to adjudge the suitability of officers. The Court does not find any reason to hold that they would not act in fair and impartial manner

in making selection. In this case, the State Government did not find any discrimination in the selection, as such, the Court is unable to find any good

reason to hold that the selection was either arbitrary or made on extraneous considerations, and not in a reasonable manner because in the minutes we

find that the Selection Committee has assigned reasons for taking their decision. Having perused the minutes of the Selection Committee, the Court is

unable to hold that there has been any discrimination against the petitioners. Rather, the selection appears to have a rational basis because persons

having higher grading were selected. As the provisions of Rule 11(2) of the 1970 Rules (as amended) envisage, inter-alia, that 25% of the vacancies in

the cadre of Sub-Inspector of FCSCA Deptt. shall be filled up from amongst the ministerial staff who are of outstanding ability, the petitioners do not

have a vested right and/or fundamental right to be promoted without the Selection Committee considering whether the petitioners were found suitable

for being promoted. Thus, the non- selection of the petitioners is not found contrary to the provisions of rule 11(2) the 1970 Rules.

15. Thus, the methodology and/or criteria adopted for selection of 11 Junior Assistants to be promoted to the post of Sub- Inspectors cannot be held to

be at variance with the 1970 Rules. Moreover, it is not the case of the petitioners

that the selection process was either not fair, or it was so absurd that the same is hit by the Wednesburyâ??s principles of unreasonableness.

16. In this regard, in the case of M.V. Thimmaiah Vs. Union Public Service Commission & Ors., (2008) 2 SCC 11 9 while discussing the power of

judicial review in respect of recommendations of the Selection Committee, the Supreme Court of India had held that the recommendations of Selection

Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory Rules and it was further held that Courts

cannot sit as an appellate authority to examine the recommendations of the Selection Committee like the court of appeal. In the case of Union Public

Service Commission Vs. M. Sathiya Priya & Ors., (2018) 15 SCC 79,6 the Full Bench of the Supreme Court of India had allowed the appeal against

the judgment and order passed by the CAT and by the High Court of Judicature at Madras by holding that neither the decision not the decision making

process was actuated with malice, and no grave mistake was committed by the Selection Committee leading to arbitrariness.

17. In the present case in hand, the decision of the Selection Committee not to promote the petitioners is held to be not in variance to the provisions of

Rule 11(2) of the 1970 Rules. In the case of Dr. Krushna Chandra Sahu (supra), cited by the learned senior counsel for the petitioners the selection

committee was constituted by the High Court of Orissa and their recommendation was held by the Supreme Court of India to be vitiated on two

counts as elaborated in paragraph 11 and in light of the facts of the said case, it was held that the Selection Committee does not have the inherent

jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. The said ratio is does not apply to the facts

of the present case because of Rule 11(2) of the 1970 Rules, as discussed herein before, which envisages that 25% of the vacancies in the cadre of

Sub-Inspector of FCSCA Deptt. shall be filled up from amongst the ministerial staff who are of outstanding ability, thus, it is quite permissible to judge

whether a particular candidate has outstanding ability from the marks obtained in the viva voce test conducted by the three high ranking departmental

officials.

18. Thus, the points of determination are answered in the negative and against the petitioners by holding that the non- promotion to the petitioners, who

were at the sl. nos. 12, 13 and 14 in the result- sheet was not illegal, arbitrary, vitiated by malice, vitiated by mistake or in violation of the 1970 Rules

and, as such, no case is made out to set aside and quash the impugned memo dated 07.01.2015 (Annexure-6). Resultantly, the petitioners are not

entitled to a direction to the State respondents to accord approval for promotion of the petitioners to the post of Sub- Inspectors under FCSCA Deptt.

under the facts and circumstances of the case.

19. Thus, in view of the discussions above, this writ petition fails and the same is dismissed. There shall be no order as to cost.

20. However, before parting with the records, it is seen that the selection process in question was initiated in the year 2012. Therefore, the non-

selection of the petitioners in the said previous process shall not be a bar for the FCSCA Deptt. to consider the candidature of the petitioners afresh in

the next selection process that may be initiated to fill up the vacant posts of Sub- Inspectors in the FCSCA Deptt. on promotion under 25% quota.