
(2007) 09 GAU CK 0014
In the Gauhati High Court

Shri Kamal Krishna Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 20-09-2007

Acts Referred:

Citation : (2007) 115 FLR 868

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Sharma, J.—The petitioner is aggrieved by forfeiture of his seniority in the division in which he is presently working as Lower Division Assistant (LDA). Same was done while transferring him from one division to another on the ground that the petitioner made request for his transfer to the present division.

2. Shortly stated, the facts leading to filing of the instant writ petition are that the petitioner was initially appointed as LDA in the office of the Executive Engineer, Goalpara Investigation Division by order dated 4.5.1978. The petitioner joined the service on 9.5.1978.

3. After continuing at Goalpara he was transferred to Gosaigaon Investigation Division by order dated 9.11.1981. His transfer from Goalpara to Gosaigaon Division was in public interest. After remaining at Gosaigaon Division, the petitioner joined the Brahmaputra Board, Guwahati on being sent on deputation. His such joining at the Brahmaputra Board on deputation was w.e.f. 1.1.1989 and he remained there upto 29.2.1994 After release from deputation, the petitioner was posted to Goalpara E & D Division. Be it stated here that in the meantime, the Goalpara Investigation Division was wound up and as such the petitioner was posted to Goalpara E & D Division. It is the case of the petitioner that since his initial appointment was in Goalpara Investigation Division Goalpara, he was rightly posted in Goalpara E & D Division, Goalpara.

4. After working at Goalpara for a couple of years, the petitioner was transferred

to Kokrajhar E & D Circle and he remained there from 8.1.1991 to 1.1.2002. By Annexure-3 office order dated 31.10.2002, the petitioner was transferred to Goalpara E & D Division with the following conditions:

(i) No transfer, T.A./D.A. will be admissible for the journey.

(ii) He will have no claim of post whatsoever towards seniority in new office of posting.

5. After joining at Goalpara, the petitioner made time to time representation for counting his seniority from the original date of appointment. Copies of such representations have been annexed as Annexures-6, 7 and 8 which are dated 25.4.2003, 16.6.2004 and 13.9.2004.

6. In the meantime, the gradation list pertaining to Goalpara E & D Division was published on 10.6.2004 showing the seniority position of the petitioner at serial No. 12 with the remark that his seniority is to be counted w.e.f. 11.11.2002, i.e. the date on which he joined Goalpara E & D Division upon his transfer by the aforesaid order dated 31.10.2002.

7. According to the petitioner since the seniority is counted division wise and his initial posting was at Goalpara Investigation Division, his seniority is to be counted from the initial date of appointment. It is his case that his request for transfer to his own division cannot entail forfeiture of his past service.

8. The respondents have filed counter affidavit stating that since the petitioner was transferred to Goalpara on condition that he would not have any claim of seniority, he now cannot resile back from that position so as to claim seniority from the initial date of appointment.

9. I have heard Mr. N.C. Baruah, along with Dr. N.C. Thakuria, learned Counsel for the petitioner. I have also heard Ms. R. Chokrabarty, learned State Counsel representing the respondents. Mr. Baruah placing reliance on the relevant rules, i.e. Assam Ministerial Establishment 795 Service Rules, 1967, submits that the seniority in respect of IDA is to be counted from the date of appointment. He submits that since the seniority is maintained division wise, there is no question of forfeiture of seniority of the petitioner upon his reposting to his own division. Mr. Baruah has also placed reliance on the decision of the Apex Court as reported in Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala and Others, . In the said decision, it has been emphasized that every executive action which operates to the prejudice of any person must have the sanction of law. The executive cannot interfere with the rights and liabilities of any person unless the legality thereof is supportable in any Court of law.

10. Countering the above argument of Mr. Baruah, Ms. R. Chokrabarty, learned State Counsel submits that since the petitioner himself accepted forfeiture of seniority upon his transfer to Goalpara, he cannot now turn around the said position so as to claim seniority from the initial date of appointment. According to her since the petitioner is a new incumbent in the Goalpara E & D Division, he will

have to accept the seniority amongst the existing LDA from the date of his transfer to that Division.

11. I have given my anxious consideration to the submissions made by the learned Counsel for the parties as well as the materials on record. There is no dispute that the petitioner was initially appointed as LDA in the Goalpara Investigation Division. If that be so, he belongs to that division and having regard to the fact that the seniority list is maintained division wise, he will occupy the position in the seniority list maintained in that division. The Goalpara Investigation Division was wound up. The petitioner remained in Goalpara F. & D Division which will be evident from his posting at Goalpara Division by order dated 2.6.1989. Before that he was repatriated from Brahmaputra Board to which he was sent on deputation.

12. The petitioner was once again transferred and posted to Kokrajhar where he remained from 8.1.1991 to 1.11.2001. It was his right to get back his posting at Goalpara and accordingly there was nothing wrong on his part to make a request.

13. Learned Counsel for the petitioner submits that the petitioner never made written request for his transfer, but represented his case orally before the appropriate authority. Me also submits that the petitioner never accepted my condition of losing seniority on being transferred to Goalpara, but when the transfer order was issued, the petitioner was surprised to find the condition of losing seniority in his own division.

14. After the aforesaid order dated 31.10.2002 transferring the petitioner to Goalpara, he made the aforementioned representations but the same fell into deaf ears of the authority. Situated thus, the petitioner invoked the writ jurisdiction of this Court for appropriate relief.

15. Once it is held that seniority is maintained division-wise and that the petitioner belongs to Goalpara division, there is no question of losing seniority on being posted to Goalpara. If the petitioner prayed for transfer to his own division, it cannot be the case of losing seniority inasmuch as Goalpara division is his parent division. The test the respondents have applied is not all applicable to the fact situation of this case. It is not the case of seeking transfer by the petitioner from Goalpara to another Division in which eventuality, it could have been the case of losing seniority. The petitioner was transferred from one division to another division in public interest and when he was posted at Kokrajhar, he prayed for transfer to his parent division. The authority taking the same to be request on condition of losing seniority, passed the transfer order dated 31.10.2002 imposing the condition of losing seniority, which in my considered opinion is not sustainable. Before imposing such condition, the petitioner was also not apprised of the same, nor any undertaking was taken from him.

16. Far the forgoing reasons, I am of the opinion that the condition of losing seniority as was imposed on the petitioner by order dated 31.10.2002, is unsustainable. Consequently, the petitioner will be entitled to count his seniority

from the initial date of appointment at Goalpara Division. His case for promotion to the rank of UDA shall be considered on that basis. Learned Counsel for the petitioner submits that the petitioner is a reserved category candidate and is entitled preference in the matter of promotion. The official respondents shall consider that aspect of the matter as well. The respondents shall suitably modify the seniority list restoring the seniority position of the petitioner taking his service in the cadre of LDA from the initial date of appointment.

17. The writ petition is allowed, leaving the parties to bear their own costs.