
(2005) 02 GAU CK 0012

In the Gauhati High Court

Case No : WP (C) No's. 737, 768, 933, and 1529 of 2000

Sidheswar Deka

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2005) 2 GLR 256

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

Bench : Single Bench

Advocate : S. Chauhan and S.K. Sarma, for the Appellant; S. Saikia, R. Chakraborty, K. Agarwal and Begum, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—All these writ petitions have been filed challenging the promotions of the private respondents on the ground that while promoting them the official respondents did not consider the case of the petitioners who are admittedly senior to them. The petitioners in W.P.(C) No. 737/2000, W.P.(C) No. 933/2000 and W.P.(C) No. 768/2000 are working as Accountant under the respondent Marketing Board while the petitioner in W.P.(C) No. 1529/2000 is working as Accounts Assistant under the Board. It is the grievance of the petitioners that the private respondents even in the cadre of L.D.A. (Grade III) and persons belonging to Grade IV have been promoted as Marketing Inspector giving them multiple promotions ignoring the case of the petitioners who are much senior to all the private respondents.

2. The official-respondents have filed an affidavit in W.P.(C) No. 737/2000 and the learned counsel for the respondent-Board submits that the said affidavit-in-opposition will govern all the cases. Respondent No. 12 in W.P.(C) No. 737/2000 has also filed an affidavit supporting the action of the official respondent towards his promotion as Marketing Inspector.

3. I have heard Mr. S. Chauhan, learned counsel for the petitioners and Mr. S.K. Sarma, learned counsel for the petitioner in W.P.(C) No. 1529/2000. I have also heard Ms. R. Chakraborty, learned Govt. Advocate appearing for the State-respondents and Mr. S. Saikia, learned counsel for the respondent-Board. I have also heard Mr. K. Agarwal, learned counsel for the respondent No. 12 in W.P.(C) No. 737/2000 and Ms. Begum, learned counsel appearing for some of the private-respondents in the writ petitions.

4. The official respondents in their affidavit have taken the stand that the private-respondents had to be promoted at the first instance, in the exigency of service and thereafter their promotions were regularised. As per the stand taken in the affidavit, there is no service rule governing the service condition of the employees of the respondent-Board and that basically there are two streams of service, i.e., administrative service and field service. According to the respondents, the promotion to the cadre of Marketing Inspector is effected only from amongst the employees working in the field service. However, in the instant case, the incumbents, i.e., some of the private respondents had to be promoted from the administrative side in the exigencies of service.

5. Mr. S. Chauhan and Mr. S.K. Sarma, learned counsel appearing for the writ petitioners submit that the action of the official respondents is not in conformity with Articles 14 and 16 of the Constitution of India. They submit that the official-respondents have deprived the petitioners of their legitimate promotion without any valid consideration. According to them, the petitioners being by far senior both in length of service as well as cadrewise seniority, their cases could not have been ignored by the official-respondents towards making the promotion to the rank of Marketing Inspector.

6. Mr. S. Saikia, learned counsel for the respondent-Board on the other . hand submits in tune with the stand taken in the affidavit that the private-respondents had to be promoted as Marketing Inspector in the exigencies of service and eventually their promotions were regularised. Mr. Agarwal, learned counsel for the respondent No. 12 in W.P.(C) No. 737/2000 submits that the respondent No. 12 appeared in a selection as was conducted by the official-respondents and pursuant to his selection, he was promoted to the rank of Marketing Inspector. He submits that necessary call letters etc. were issued to the applicants who applied for such promotion and it was on consideration of such candidatures, the private-respondents were promoted as Marketing Inspector.

7. Mr. S. Chauhan and Mr. S.K. Sarma, learned counsel for the writ petitioners seriously dispute the submissions made by Mr. K. Agarwal about submission of application and calling for interview etc. They submit that no opportunity was given to the petitioners to appear in selection, if so conducted by the respondents. They submit that the petitioners were never apprised of any such selection and that the private respondents were promoted as pick and choose basis.

8. I have considered the submissions made by the learned counsel for the parties and have perused the materials available on records. As regards, the plea of the respondent No. 12 in W.P.(C) No. 737/2000 that a selection was conducted for the purpose of making promotion to the cadre of Marketing Inspector, no such stand has been taken by the official-respondents. The only stand taken is that the private respondents, irrespective of their stream, had to be promoted only in exigencies of service. At the first instance they were allowed to hold charge of the posts of Marketing Inspector in addition to their own assigned duties. Thereafter they were regularly appointed as Marketing Inspector. No reason is discernible as to why the petitioners could not be given same treatment as was given to the private-respondents. While making the promotions, the official-respondents even considered the case of the Grade III and IV employees. However, petitioners who has been working in the cadre of Accounts Assistant and Accountant which are much higher cadres than those category of staff were ignored.

9. Mr. Saikia, learned counsel for the respondent-Board making a reference to the stand in the affidavit submits that the petitioners have got their own avenue of promotion and thus they are not entitled to be considered for promotion as Marketing Inspector. He fairly submits that while considering the case of the private respondents, the case of the petitioners was not considered. He expressed the apprehension that in the event of granting the petitioners promotion in the cadre of Marketing Inspector, in future, they might again claim promotion in the avenue of promotion provided for the Accounts Assistant and the Accountant.

10. It appears that no definite criteria was adopted towards promoting the private-respondents. The persons belonging to Grade III and Grade IV cadres were also considered for such promotion. If that be so, it is not understood as to why the case of the petitioners who are in much higher cadre and seniority could not be considered for promotion.

11. Mr. Sarma, learned counsel for the petitioner in W.P.(C) No. 1529/ 2000 has drawn my attention to the gradation list of the incumbents. As per the said gradation list, the petitioners are in much higher cadre than the private-respondents whose case was considered for promotion and were granted promotion as Marketing Inspector.

12. In view of the above, there is no escape from the conclusion that the petitioners are also entitled to have same consideration applying the same yardstick as was applied to the case of the private-respondents. As has been observed by the Apex Court in the case of R.K. Sethi and another Vs. Oil and Natural Gas Commission and others, "next below rule" in service jurisprudence seeks to ensure that if a junior employee is given promotion without considering his senior then the senior employee can claim the right to be considered for such promotion with effect from the date on which the junior was so promoted. In the instant case also the petitioners were admittedly senior to the respondents when

they were deprived of their promotion. Not to speak of granting them promotion, but they were not even considered for such promotion by the respondents. Thus, I am of the considered opinion that the principle of "next below rule" as shown is applicable in the instant case.

13. In view of the above I dispose of all the writ petitions with a direction to the respondents to consider the case of the petitioners applying the same yardstick as was applied to the case of the private-respondents for their promotion as Marketing Inspector, from the date when the private-respondents who are admittedly junior to them were so promoted. Upon such consideration, if they are promoted as Marketing Inspector, same shall be effective from the date when the private-respondents were so promoted.

14. It is made clear that the petitioners on the basis of the principle "no work no pay" will not be entitled to any back wages. However, their pay in the promotional post shall be notionally fixed from the date of their promotion at par with the promotion of the juniors and they will be entitled to consequential service benefits of seniority etc. in tune with their earlier seniority.

15. The entire exercises shall be carried out by the respondents within a period of three (3) months from the date of furnishing the certified copy of this judgment and order.

16. The writ petitions are allowed to the extent indicated above. However, there shall be no order as to costs.