
(2021) 12 GAU CK 0042

Gauhati High Court

Case No: Writ Petition (Civil) No. 2056 Of 2015

Chandan Nath

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision: Dec. 16, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Sanjay Kumar Medhi, J

Bench: Single Bench

Advocate: M.H. Laskar, R.Dhar, J. Handique

Final Decision: Dismissed

Judgement

1. Heard Shri M.H. Laskar, learned counsel for the petitioner. Also heard Shri R. Dhar, learned State Counsel representing the State respondents as well as Shri J. Handique, learned Standing Counsel, Revenue Department.

2. The present writ petition has a chequered history. The petitioner was appointed as a Chainman in the establishment of the Deputy Commissioner, Cachar in the year 1987. The post of Chainman is a Grade-IV post.

3. It is the case of the petitioner that vide an order dated 24.02.2006, he was promoted (upgraded) to the post of Duftry. It is clarified that the said post of Duftry is also a Grade-IV post with however certain added financial benefits. It is seen that along with the petitioner, one Adhir Barman (Peon) was also upgraded to the post of Duftry.

4. It is the case of the petitioner that immediately thereafter vide an order dated 04.03.2006, the upgradation order dated 24.02.2006 was revoked. The

said order of revocation was a speaking order which narrated that the earlier process culminating in the order dated 24.02.2006 was not a due process

of law. It was further stated that the Chainman was outside the cadre for being promoted in the lines of Duftry and the functions assigned are not like

that of a peon which is confined to the office. On the other hand, the functions and duties of a Chainman is mainly field duties. It has also been

narrated that though only two applications were received for consideration, there was no requirement at all for any such applications as promotion is

an intra-office exercise where all eligible incumbents would be considered.

5. It is the case of the petitioner that vide another order of the same date, Shri Adhir Barman who was also promoted to the rank of Duftry was

retained and only the petitioner was revoked and in his place another incumbent Shri Alauddin Barbhuiya was inducted as Duftry.

6. By contending that there has been earlier instances where Chainman were promoted to the post of Duftry / Process Server, the aforesaid order

dated 04.03.2006 was challenged in the year 2011 by filing a Writ Petition being WP(C) 5059/2011. Though the delay itself in approaching the Court

was an inordinate one, this Court vide order dated 27.03.2014, had directed the case of the petitioner to be considered afresh in the post available. The

said direction was issued on the concession made on behalf of the State. Thereafter, the order dated 12.09.2014 has been passed whereby the case of

the petitioner for promotion to the post of Duftry/ Process Server has been rejected.

7. Shri Laskar, the learned counsel for the petitioner, has submitted that the said rejection is arbitrary as the relevant factors have not been taken into

consideration whereas, extraneous and irrelevant factors have been taken into account. It is submitted that the initial order of promotion / upgradation

was for two incumbents, the petitioner and one Shri Adhir Barman. However, it is only the petitioner who was denied such upgradation and not Shri

Barman who was at par. The petitioner contends that so far qualification is concerned whereas the petitioner is Class IX passed, the said Shri Adhir

Barman is Class VIII pass. Further, in place of the petitioner one Shri Alauddin Barbhuiya has been given the benefit. It is further submitted that there

have been earlier instances where Chainman were promoted to the post of Duftry/Process Server. Lastly, it is submitted that in absence of any

Service Rules governing the services of the petitioner, no distinction can be made between the posts of Chainman and Peon and the 35 years of dedicated service rendered by the petitioner have been overlooked.

8. Per contra, Shri R. Dhar, the learned Addl. Senior Government Advocate, Assam raises a preliminary objection on the maintainability of the writ petition in absence of any challenge to the Speaking Order dated 12.09.2014 passed by the Deputy Commissioner, Cachar. By drawing the attention of this Court to the prayer in the writ petition, the State Counsel submits that the prayers are confining to a direction for forthwith promotion of the petitioner to the post of Duftry.

9. On merits, the learned State Counsel has submitted that the post of Chainman and Peon are entirely on different fields. Whereas, the post of Chainman is a post mainly with field duties, the post of Peon is a post mainly confined to the office. The promotional avenue for the post of Chainman is Lot Patwary whereas for that of a Peon, the promotional post is LDA. It is further submitted that the post of Chainman is assigned with duties which are seasonal in nature. The State Counsel has also drawn the attention of this Court to the two numbers of documents annexed in the writ petition itself being Draft Gradation List of Chainman and a Draft Gradation List of Ministerial Staff of Grade-IV, Cachar which would establish beyond any doubt that the two services are absolutely different.

10. Lastly, the learned State Counsel submits that apart from the aforesaid lacuna, the present may not be a fit case for interference inasmuch as the order dated 12.09.2014 contains reasons which are germane to the issue involved and this Court may not go into the aspect of justifiability of the reasons assigned in absence of any blatant or glaring perversity in the same.

11. So far as the submission regarding retaining the other incumbent Shri Adhir Barman is concerned, apart from the fact that the said incumbent is not a party in the proceedings, the State Counsel has submitted that the post held by the petitioner and Shri Barman are not identical. Though both the posts are Grade-IV post, the line of promotion/ upgradation is entirely different. Therefore, no comparison can be made between the petitioner and Shri Barman.

12. Shri J. Handique, learned Standing Counsel, Revenue Department submits that the order dated 12.09.2014 contains reasons which are relevant

and therefore, no interference is called for. He endorses the submission of the learned State Counsel that in absence of a specific challenge to the order dated 12.09.2014, no relief, whatsoever can be granted to the petitioner.

13. The rival submissions of the learned counsel for the parties have been duly considered and the materials before this Court have been carefully examined.

14. The order dated 12.09.2014 is admittedly not under challenge. By the said order, the learned Deputy Commissioner, Cachar has rejected the prayer of the petitioner for upgradation to the post of Duftry/ Process Server. A perusal of the said order would reveal that the said authority has cited reasons for coming to the said conclusion.

15. Assuming for the sake of argument that not challenging the order dated 12.09.2014 is a mere technicality, this Court in exercise of powers under Article 226 of the Constitution of India is entitled to examine the decision making process and not the decision.

16. The Honâ€™ble Supreme Court in a catena of judgments has held that a writ Court, in exercise of powers of judicial review though may not embark upon examining a particular decision, the process adopted to come to the said decision is definitely within the purview of exercise of such powers.

17. The Honâ€™ble Supreme Court in the celebrated case of Tata Cellular v. Union of India, reported in (1994) 6 SCC 651 have laid down as follows:-

â€œ74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

75. In Chief Constable of the North Wales Police v. Evans²³ Lord Brightman said:

â€œJudicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.â€

Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed,

the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.â€

In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the following terms:

â€œThis remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided

by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of

authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practised at the Bar, administrative. It is not intended to take

away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions.

It is intended to see that the relevant authorities use their powers in a proper manner.â€

18. In the said case of *Tatat Cellular* (supra), the Honâ€™ble supreme Court in broad terms has also laid down the parameters for exercise of judicial

review by framing the following questions :-

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

19. It has further been laid down that, it is not for the court to determine whether a particular decision is fair. It is only concerned with the manner in

which those decisions have been taken and that the extent of the duty to act fairly will depend on the facts and circumstances of the case.

20. If a writ Court finds that the decision making process has been done by following the due process of law and in bona fide exercise of powers by

an authority having jurisdiction, such decision is not liable to be interfered only because of the fact that an alternative conclusion was possible to be

arrived at. It is further been laid down that the power of judicial review is not an appeal from a decision which can be replaced by this Court.

21. In the instant case, the order of rejection dated 12.09.2014 takes into account certain factors namely,

(i) the post of Duftry is not a promotional post of Chainman,

(ii) the promotional post of Chainman is Lot Patwary,

(iii) the Gradation List of Chainman is separately maintained.

(iv) the nature of work of Chainman is not the same with ministerial staff.

22. This Court is of the view that the aforesaid considerations are all relevant and bona fide. This Court has also noticed that in the two nos. of

Gradation Lists annexed to the Writ Petition, the same pertaining to Chainman is an exclusive one which pertains to the Land Records Establishment

of the DC Office, which the other pertains to Ministerial Staff.

23. This Court also finds force in the contention of the learned State Counsel that the work assigned to a Chainman is mainly seasonal work pertaining

to the field as and when settlement operations are taken up. The said post of Chainman cannot be regarded to be a post identical to the post of Peon

post promotional ladder is wholly different. While a Chainman can aspire to become a Lot Patwary, subject to having the qualification, a Peon can

become a Junior Assistant.

24. Under the aforesaid facts & circumstances, this Court is of the view that no enforceable right of the petitioner has been able to be established in

the present case and therefore, the same is liable to be dismissed.

25. No order as to cost.